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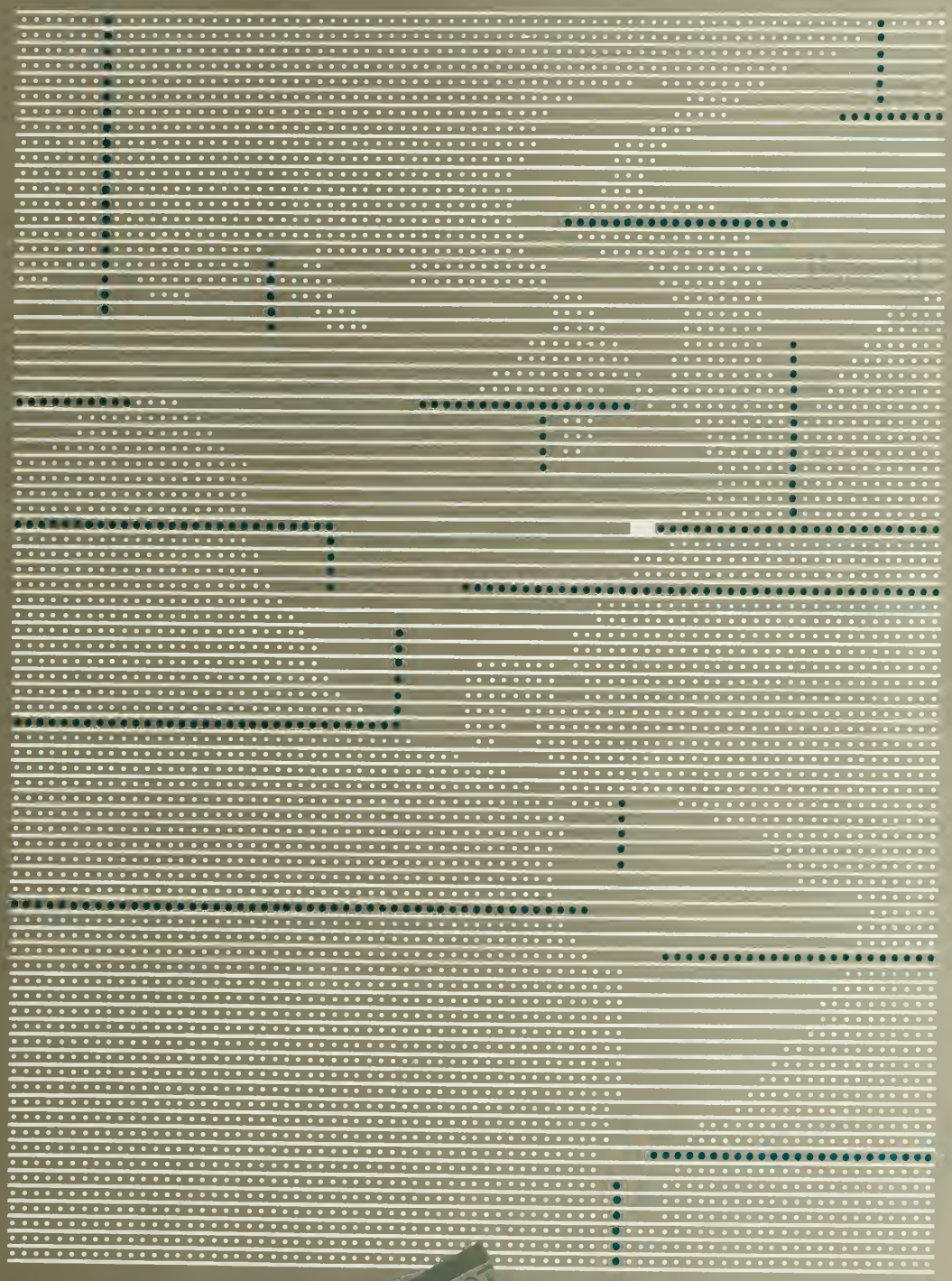
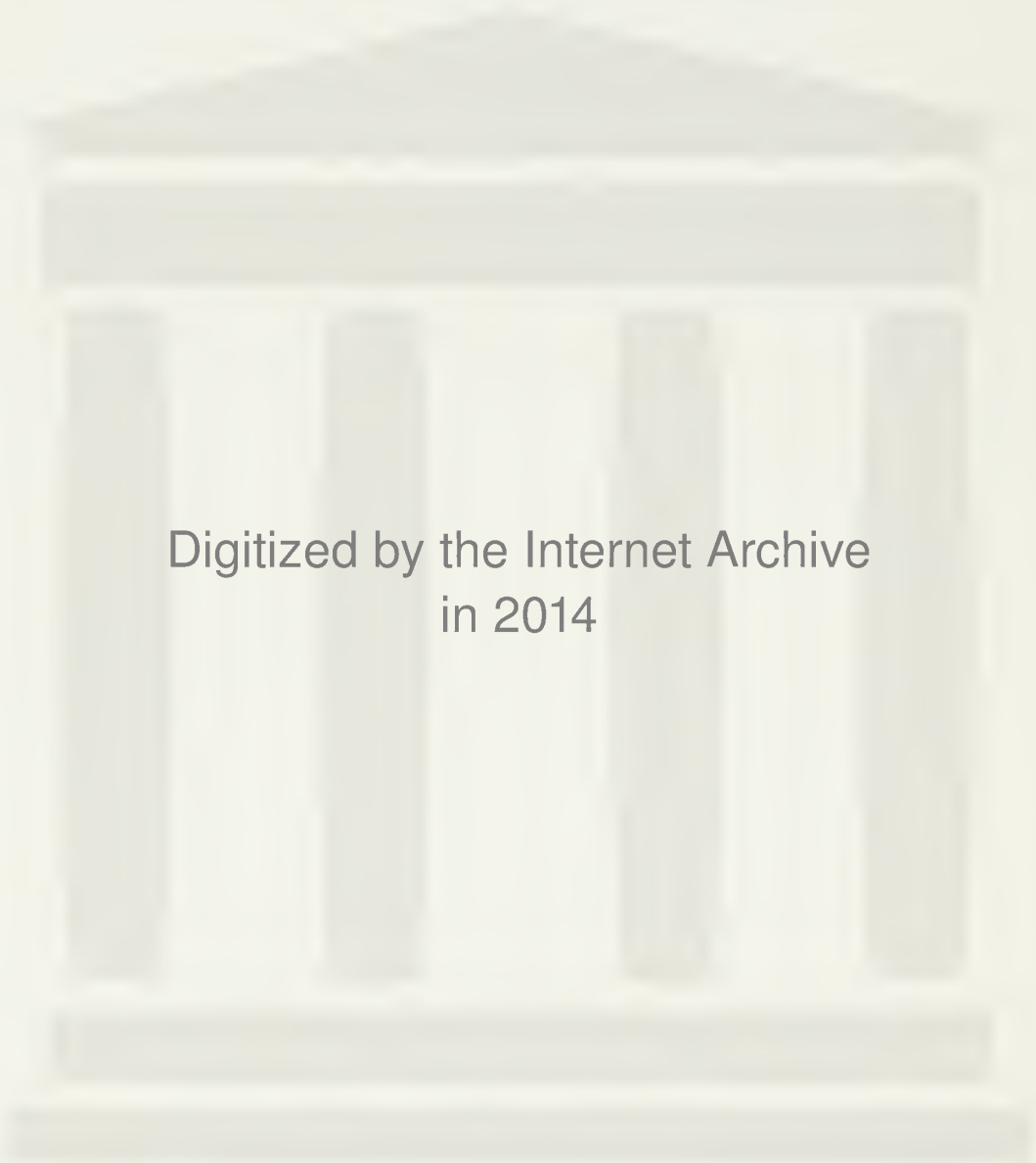
Massachusetts International Export Guide

A Source Book for Information Technology Companies

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Massachusetts International Export Guide:

A Source Book for Information Technology Companies

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INTRODUCTION

In the fall of 1988, the Massachusetts International Trade Council, Inc. published the first edition of the Massachusetts International Software Export Guide, as a tool for Massachusetts information technology companies.

As a result of the many changes that have occurred over the past two years, a second expanded edition of the Guide has been prepared. We hope you find the second edition useful, and as always we welcome your comments and suggestions about how we can make the Guide more informative. A special thanks goes to Stephanie Schear and Barbara Clarke for all their assistance in making the publication of the Guide possible.

Leslie K. Peterson
Editor

MASSACHUSETTS INTERNATIONAL TRADE COUNCIL, INC. (MITC)

The Massachusetts International Trade Council, Inc. is a publicly funded non-profit corporation created by Executive Order of the Governor. The Office works with companies in Massachusetts to provide assistance in doing business internationally. In addition to producing the Massachusetts International Export Guide: A Source Book for Information Technology Companies, MITC organizes participation for Massachusetts companies in selected overseas trade shows and trade missions, and works with individual companies to identify and qualify potential distributors in targeted foreign markets.

For more information about our programs please contact:

Massachusetts International Trade Council, Inc.
100 Cambridge Street, Suite 902
Boston, MA 02202
Phone: (617) 367-1830
Fax: (617) 227-3488

1989-1992 INTERNATIONAL TRADE FAIRS BY DATE

AUGUST 1989

COMDEX/ASIA PACIFIC 89
Date: August 1 - 3, 1989
Location: Sydney, Australia

COMPUEXPO
Date: August 21 - 25, 1989
Location: Bogota, Colombia

LINK'89 - COMMUNICATIONS TECHNOLOGY FAIR
Date: August 30 - September 1, 1989
Location: Tampere, Finland

NATIONAL COMPUTER SHOW
Date: August 31 - September 2, 1989
Location: Perth, Australia

SEPTEMBER 1989

COM EXPO'89 - INTERNATIONAL COMPUTER AND COMMUNICATION TRADE EXHIBITION
Date: September 5-7, 1989
Location: Guadalajara, Mexico

COMTEC - INTERNATIONAL COMPUTER AND TECHNOLOGY EXHIBITION
Date: September 11 - 17, 1989
Location: Singapore, Malaysia

HI-89
Date: September 12 - 16, 1989
Location: Herning, Denmark

INFORMATICA
Date: September 18 - 22, 1989
Location: San Paulo, Brazil

TELCOM CHINA'89 - EXHIBITION ON TELECOMMUNICATIONS OFFICE AUTOMATION AND COMPUTER
Date: September 18 - 23, 1989
Location: Beijing, China

TELECOMP CHINA'89 - EXHIBITION ON TELECOMMUNICATIONS, OFFICE AUTOMATION AND COMPUTER
Date: September 18 - 23, 1989
Location: Beijing, China

MEXICON
Date: September 19 - 22, 1989
Location: Mexico City, Mexico

COMPUTER SOCIETY OF INDIA'S ANNUAL CONVENTION AND EXHIBITION
Date: September 20 - 23, 1989
Location: Bangalore, India

INFORVEN' 89
Date: September 20 - 23, 1989
Location: Caracas, Venezuela

BUFA - TRADE SHOW FOR AUTOMATION, EQUIPMENT, ORGANIZATION, TELECOMMUNICATIONS AND SYSTEMS
Date: September 26 - 30, 1989
Location: Basel, Switzerland

COMPUTER HARDWARE AND SOFTWARE TRADE MISSION
Date: September 26-October 8, 1989
Location: Sydney and Perth, Australia (New Zealand as well)

EFFICIENCY VAKBEURS'89 - OFFICE AND INFORMATION TECHNOLOGY
Date: September 29 - October 6, 1989
Location: Amsterdam, The Netherlands

OCTOBER 1989

DATA-OFFICE
Date: October 2 - 6, 1989
Location: Stockholm, Sweden

MICRO-TECH
Date: October 2 - 5, 1989
Location: Tokyo, Japan

PRODUCTIQUE 89
Date: October 2 - 5, 1989
Location: Paris, France

OFFICE AND BANK - OFFICE AND BANK TECHNOLOGY, COMPUTER & COMMUNICATIONS EQUIPMENT EXHIBITION
Date: October 3 - 7, 1989
Location: New Delhi, India

MANUSOF'89
Date: October 4 - 7, 1989
Location: Singapore, Malaysia

COMPUTER, COMMUNICATIONS & ELECTRONICS
Date: October 4 - 9, 1989
Location: Dhahran, Saudi Arabia

COMPUTER
Date: October 5 - 8, 1989
Location: Bangkok, Thailand

"CIM" COMPUTERS IN MANUFACTURING
Date: October 10 - 13, 1989
Location: Birmingham, England

CHINA ELECOM'89 - INTERNATIONAL TELECOMMUNICATIONS AND COMPUTER EXHIBITION
Date: October 10 -15, 1989
Location: Shanghai, China

PERSONAL COMPUTERS '89
Date: October 11 - 17, 1989
Location: Minsk, USSR

COMPUTEX TAIPEI
Date: October 13 - 19, 1989
Location: Taipei, Taiwan

SYSTEMS - COMPUTERS AND COMMUNICATIONS-INTERNATIONAL USER CONGRESS AND INTERNATIONAL TRADE SHOW
Date: October 16-20, 1989
Location: Munich, West Germany

HI-TEC'89 - SPECIALIZED FAIR FOR SOFTWARE AND ENGINEERING TECHNIQUES
Date: October 18 - 20, 1989
Location: Tampere, Finland

SYSTEC - INTERNATIONAL TRADE FAIR AND CONGRESS FOR COMPUTER INTEGRATION
Date: October 22-26, 1989
Location: Munich, West Germany

20TH ANNUAL CANADIAN COMPUTER SHOW AND CONFERENCE
Date: October 23 - 26, 1989
Location: Toronto, Canada

MIKRODATA'89
Date: October 25 - 29, 1989
Location: Copenhagen, Denmark

INFORPOR
Date: October 27 - 30, 1989
Location: Lisbon, Portugal

NOVEMBER 1989

THE MACUSER'89 - 3RD ANNUAL MACINTOSH EXHIBITION AND CONFERENCE
Date: November 1 - 4, 1989
Location: London, England

COMMUNICATIONS TURKEY '89
Date: November 1 - 5, 1989
Location: Istanbul, Turkey

OFFICE AND TELEMATIC - INTERNATIONAL TELECOMMUNICATIONS & INFORMATION TECHNOLOGY EXHIBITION
Date: November 1 - 5, 1989
Location: Bangkok, Thailand

INFOSYSTEM (3RD ANNUAL)
Date: November 1 - 5, 1989
Location: Thessaloniki, Greece

PACIFIC RIM COMPUTER AND COMMUNICATIONS SHOW
Date: November 1 - 3, 1989
Location: Vancouver, Canada

CAD/CAM 89
Date: November 7 - 10, 1989
Location: Sandvika, Norway

DAK/DAP'89
Date: November 7 - 10, 1989
Location: Sandvika, Norway

NICOGRAPH'89
Date: November 7 - 10, 1989
Location: Tokyo, Japan

MUREX '89 - INTERNATIONAL MILITARY SURPLUS/PRE-WAR DEFENSE
Date: November 8 - 11, 1989
Location: Singapore, Malaysia

ELEKTROTECHNNIEK'89
Date: November 13 - 17, 1989
Location: Utrecht, The Netherlands

LATCOM'89
Date: November 15 - 17, 1989
Location: Buenos Aires, Argentina

U.S. PRODUCT SHOW
Date: November 15 - 18, 1989
Location: Seoul, Korea

SIMO-OFFICE EQUIPMENT AND COMPUTERS
Date: November 17 - 24, 1989
Location: Madrid, Spain

CAD/CAM - INTERNATIONAL TRADE FAIR FOR COMPUTER AIDED DESIGN AND COMPUTER AIDED MANUFACTURING
Date: November 21 - 23 1989
Location: Kortrijk, Belgium

COM EXPO'89 - INTERNATIONAL COMPUTER AND COMMUNICATION TRADE EXHIBITION
Date: November 28 - 30, 1989
Location: Monterrey, Mexico

JAPAN OFFICE'89
Date: November 30 - December 3, 1989
Location: Tokyo, Japan

DECEMBER 1989

SEARCC
Date: December, 1989
Location: Singapore, Malaysia

COMMTEL ASIA '89 - INTERNATIONAL TELECOMMUNICATIONS EQUIPMENT, NETWORKS AND SERVICES SHOW
Date: December 5 - 8, 1989
Location: Hong Kong

SINGAPORE INFORMATICS
Date: December 6 - 10, 1989
Location: Singapore, Malaysia

JANUARY 1990

COMPUTER HARDWARE AND SOFTWARE TRADE MISSION
Date: January, 1990
Location: Madrid, Spain
Athens, Greece
Milan and Rome, Italy

SUPERCOMPUTING EUROPE '90
Date: January 10 -12, 1990
Location: London, England

SAUDI COMPUTER '90 - COMPUTER AND COMPUTER GRAPHICS SHOW
Date: January 28 - February 1, 1990
Location: Riyadh, Saudi Arabia

FEBRUARY 1990

EDP USA MILAN SOLO FAIR
Date: February, 1990
Location: Milan and Rome, Italy

COM EXPO'89 - INTERNATIONAL COMPUTER AND COMMUNICATION TRADE EXHIBITION
Date: February 13 - 16, 1990
Location: Mexico City, Mexico

ONLINE'90 - EUROPEAN CONGRESS FAIR FOR TECHNICAL COMMUNICATIONS
Date: February 13 - 16, 1990
Location: Hamburg, West Germany

MARCH 1990

PC'90 - 14th Australian Personal Computer Show
OFFICE TECHNOLOGY'90 - 7th Australian International Personal Computer Show
COMMUNICATIONS '90 - 6th Australian International Electronic Communications and Information Exhibition
Date: March 6 - 9, 1990
Location: Sydney, Australia

COMPUTER-SCHAU - COMPUTER, SOFTWARE AND EQUIPMENT EXHIBITION
Date: March 14-18, 1990
Location: Dortmund, West Germany

COMPUTER AND BUSINESS EQUIPMENT INDONESIA - 6TH INTERNATIONAL COMPUTER AND BUSINESS EQUIPMENT EXHIBITION
Date: March 20 - 24, 1990
Location: Jakarta, Indonesia

CeBIT HANNOVER FAIR
Date: March 21-28, 1990
Location: Hannover, West Germany

SUPER COMPUTING JAPAN'90
Date: March 27 - 29, 1990
Location: Tokyo, Japan

APRIL 1990

COMPUTACION SOLO FAIR
Date: April, 1990
Location: Mexico City, Guadalajara

VENEZUELA COM EXPO - INTERNATIONAL COMPUTER AND COMMUNICATIONS EXHIBITION
Date: April 2 - 5, 1990
Location: Caracas, Venezuela

INTEROFFICE (International Exhibition on Computers and Office Equipment)
Date: April 10 - 14, 1990
Location: Jakarta, Indonesia

SICOB - INTERNATIONAL DATA PROCESSING, TELEMATICS, COMMUNICATION, OFFICE ORGANIZATION AND AUTOMATION TRADE FAIR
Date: April 14 - 21, 1990
Location: Paris-Nord/Villepinte, France

MAY 1990

INFOBASE - INTERNATIONAL EXHIBITION AND CONVENTION ON INFORMATION MANAGEMENT
Date: May, 1990
Location: Frankfurt, West Germany

EUROPE SOFTWARE
Date: May, 1990
Location: Utrecht, The Netherlands

COMPUTER SOFTWARE AND HARDWARE EXECUTIVE LEVEL TRADE MISSION
Date: May, 1990
Location: Shanghai, Beijing, Shenyang; China (Hong Kong as well)

HONG KONG COMPUTER EXHIBITION AND CONFERENCE
Date: May 7 - 10, 1990
Location: Hong Kong

BRAZIL COM EXPO'90 - INTERNATIONAL COMMUNICATIONS EXPO & SEMINAR
Date: May 8 - 11, 1990
Location: Rio de Janeiro, Brazil

COMMUNICATIONS'90
Date: May 15 - 18, 1990
Location: Birmingham, England

IFABO
Date: May 15-19, 1990
Location: Vienna, Austria

INFOTECHASIA'90
COMMUNICASIA'90
Date: May 29 - June 1, 1990
Location: Singapore, Malaysia

CAT - COMPUTER AIDED TECHNOLOGIES IN MANUFACTURING, INTERNATIONAL EXHIBITION AND USER CONGRESS
Date: May 29-June 1, 1990
Location: Stuttgart, West Germany

JUNE 1990

PC'90 - 14th Australian Personal Computer Show
OFFICE TECHNOLOGY '90 - 7th Australian International Office Technology Exhibition
COMMUNICATIONS '90 - 6th Australian International Electronic Communications and Information Exhibition
Date: June 3 - 6, 1990
Location: Melbourne, Australia

TELEMATICA'90 - INTERNATIONAL TELECOMMUNICATIONS EXHIBITION
Date: June 11 - 14, 1990
Location: Stuttgart, West Germany

NOR-COM'90 - INTERNATIONAL TELECOMMUNICATIONS EXHIBITION AND CONFERENCE
Date: June 12 - 16, 1990
Location: Oslo, Norway

AUGUST 1990

INFORMATICA
Date: August/September 1990
Location: Rio de Janeiro, Brazil

SEPTEMBER 1990

COMPUTER HARDWARE AND SOFTWARE TRADE MISSION
Date: September, 1990
Location: Seoul, Korea (Osaka, Kobe, Tokyo, Japan)

PHIL TELECOM'90 - EXHIBITION ON TELECOMMUNICATIONS SYSTEMS, EQUIPMENT AND TECHNOLOGY
Date: September 11 - 15, 1990
Location: Manila, The Philippines

BUREAU - INTERNATIONAL OFFICE EQUIPMENT, DATA PROCESSING AND TELECOMMUNICATIONS TRADE SHOW
Date: September 19 -26, 1990
Location: Brussels, Belgium

NOVEMBER 1990

ARGENTINA COM EXPO'90 - INTERNATIONAL COMPUTER AND COMMUNICATIONS EXHIBITION
Date: November, 1990
Location: Buenos Aires, Argentina

COMMUNICATIONS TURKEY '90
Date: November 1 - 5, 1990
Location: Istanbul, Turkey

OFFICE AND TELEMATIC - INTERNATIONAL TELECOMMUNICATIONS & INFORMATION TECHNOLOGY EXHIBITION
Date: November 2 - 5, 1990
Location: Bangkok, Thailand

DECEMBER 1990

COMMTEL ASIA '89 - INTERNATIONAL TELECOMMUNICATIONS EQUIPMENT, NETWORKS AND SERVICES SHOW
Date: December 4 - 7, 1990
Location: Hong Kong

JANUARY 1991

7TH MIDDLE EAST COMPUTER SHOW - INCORPORATING COMPUTER GRAPHICS AND BANKING SERVICES
Date: January 21 - 24, 1991
Location: Bahrain

MARCH 1991

PC '91 - 14th Australian Personal Computer Show
OFFICE TECHNOLOGY '90 - 7th Australian International Office Technology Exhibition
COMMUNICATIONS '90 - 6th Australian International Electronic Communications and Information Exhibition
Date: March 5 - 8, 1991
Location: Sydney, Australia

OCTOBER 1991

TELECOM'91 - 6TH WORLD TELECOMMUNICATIONS EXHIBITION
Date: October 8 - 15, 1991
Location: Geneva, Switzerland

1992 AND BEYOND

IMPRINTA'92 - INTERNATIONAL CONGRESS AND EXHIBITION FOR COMMUNICATIONS TECHNIQUES
Date: February 19 - 25, 1992
Location: Dusseldorf, West Germany

CeBIT HANNOVER FAIR
Date: March 11-18, 1992
March 24-31, 1993
March 16-23, 1994
Location: Hannover, West Germany

1989-1992 INTERNATIONAL TRADE FAIRS BY COUNTRY

ARGENTINA

LATCOM'89

Date: November 15 - 17, 1989
Location: Buenos Aires
Contact: LATCOM, Inc.
300 Aragon Avenue, Suite 260
Coral Gables, FL 33134
Phone: (305) 446-5150
Fax: (305) 442-4741

ARGENTINA COM EXPO'90

INTERNATIONAL COMPUTER AND COMMUNICATIONS EXHIBITION

Date: November 1990
Location: Buenos Aires
Contact: Marketing International Corporation
P.O. Box 4749
Arlington, VA 22204-0749
Phone: (703) 685-0600
Fax: (703) 979-1503

AUSTRALIA

COMDEX/ASIA PACIFIC '89

Date:	August 1 - 3, 1989
Location:	Sydney
Contact:	The Interface Group, Inc. 300 First Avenue Needham, MA 02194 Phone: (617) 449-6600 Fax: (617) 449-6953

NATIONAL COMPUTER SHOW

Date:	August 31 - September 2, 1989
Location:	Perth
Contact:	American Consulate General-Perth 246 St. George's Terrace Perth, WA 6000 Phone: 61/9/3253569 Fax: 852/5/8450943

COMPUTER HARDWARE AND SOFTWARE TRADE MISSION

Date:	September 26-October 8, 1989
Location:	Sydney, Perth (New Zealand as well)
Contact:	Vera A. Swann Office of Computers and Business Equipment U.S. Department of Commerce 14th Constitution Ave., Room HCHB 2008 Washington, D.C. 20230 Phone: (202) 377-4331

PC'90
14TH AUSTRALIAN PERSONAL COMPUTER SHOW
OFFICE TECHNOLOGY'90 -
7TH AUSTRALIAN INTERNATIONAL OFFICE TECHNOLOGY EXHIBITION
COMMUNICATIONS '90 -
6TH AUSTRALIAN INTERNATIONAL ELECTRONIC COMMUNICATIONS AND INFORMATION EXHIBITION

Date: March 6 - 9, 1990 - Sydney
June 3 - 6, 1990 - Melbourne
March 5 - 8, 1991 - Sydney

Contact: Andry Montgomery Group
11 Manchester Square
London W1M 5AB
England
Phone: 01/486-1951
Fax: 01/4868773

AUSTRIA

IFABO

Date: May 15-19, 1990
Location: South, Mid and West Exhibition Centres, Vienna
Contact: Vienna Fairs and Congress, Ltd.
PO Box 124, Messeplatz 1
A-1071 Vienna, Austria
Phone: 222/931-5240
Fax: 222/931-524290

BAHRAIN

7TH MIDDLE EAST COMPUTER SHOW -
INCORPORATING COMPUTER GRAPHICS AND BANKING SERVICES

Date: January 21 - 24, 1991
Location: Bahrain
Contact: Andry Montgonery Ltd.
11 Manchester Square
London W1M 5AB
England
Phone: 01/486-1951
Fax: 01/486-8773

BELGIUM

BUREAU -
INTERNATIONAL OFFICE EQUIPMENT, DATA PROCESSING AND TELE-COMMUNICATIONS TRADE SHOW

Date: September 19 -26, 1990
Location: Brussels
Contact: Chambre Belge De La Mecanographie A.S.B.L.
24 Avenue Marcel Thiry
1200 Brussels
Belgium
Phone: 32/2/7627183
Telex: 20301

CAD/CAM - INTERNATIONAL TRADE FAIR FOR COMPUTER AIDED DESIGN AND COMPUTER AIDED MANUFACTURING

Date: November 21 - 23 1989
Location: Kortrijk
Contact: De Hallen
Doorniksesteenweg 216
8500 Kortrijk
Belgium
Phone: 32/56/215551
Fax: 32/56/217930

BRAZIL

INFORMATICA

Date: September 18 - 22, 1989 - San Paulo
August/September 1990 - Rio de Janeiro
Location: Rio Centro Pavilion, Rio de Janeiro
Contact: Vera A. Swann
Office of Computers and Business Equipment
U.S. Department of Commerce
14th Constitution Ave., Room HCHB 2008
Washington, D.C. 20230
Phone: (202) 377-4331

BRAZIL COM EXPO'90
INTERNATIONAL COMMUNICATIONS EXPO & SEMINAR

Date: May 8 - 11, 1990
Location: Rio de Janeiro
Contact: Marketing International Corporation
P.O. Box 4749
Arlington, VA 22204-0749
Phone: (703) 685-0600
Fax: (703) 979-1503

CANADA

PACIFIC RIM COMPUTER AND COMMUNICATIONS SHOW

Date: November 1 - 3, 1989
Location: Vancouver
Contact: American Consulate General, Vancouver
1075 West Georgia Street
Vancouver, British Columbia V6E 4E9
Canada
Phone: (604) 685-4311
Fax: (604) 685-5285

20TH ANNUAL CANADIAN COMPUTER SHOW AND CONFERENCE

Date: October 23-26, 1989
Location: Toronto
Contact: (For Massachusetts Booth)
Massachusetts International Trade Council, Inc.
100 Cambridge Street, Suite 902
Boston, MA 02202
Phone: (617) 367-1830
Fax: (617) 227-3488

American Consulate General, Toronto
360 University Avenue
Toronto, Ontario
Canada
Phone: (416) 595-1700
Fax: (416) 959-5419

CHINA

TELECOMP CHINA'89
EXHIBITION ON TELECOMMUNICATIONS, OFFICE AUTOMATION AND COMPUTER

Date: September 18 - 23, 1989
Location: Beijing
Contact: Mr. Raymond Tong
Adsale Exhibition Services
21/F, Tung Wai Commercial Building
109-111, Gloucester Road
Hong Kong
Phone: 852/5/731709
Fax: 852/5/731709

CHINA ELECOM'89
INTERNATIONAL TELECOMMUNICATIONS AND COMPUTER EXHIBITION

Date: October 10 -15, 1989
Location: Shanghai
Contact: Marketing Intelligence International Ltd.
24 Binney Street
London W1Y 1YN
England
Phone: 44/1/4933220

COMPUTER SOFTWARE AND HARDWARE EXECUTIVE LEVEL TRADE MISSION

Date: May, 1990
Location: Shanghai, Beijing, Shenyang, (Hong Kong as well)
Contact: Vera A. Swann
Office of Computers and Business Equipment
U.S. Department of Commerce
14th Constitution Ave., Room HCHB 2008
Washington, D.C. 20230
Phone: (202) 377-4331

COLOMBIA

COMPUEXPO

Date: August 21 - 25, 1989
Location: Bogota
Contact: American Embassy Bogota
Bogota, Columbia
Phone: 57/1/285-1300
Fax: 57/1/285-7945

DENMARK

HI-89

Focus On: Computer and Office Equipment
Date: September 12 - 16, 1989
Location: Herning
Contact: American Embassy Copenhagen
Copenhagen, Denmark
Phone: 45/1/423144
Fax: 45/01/430278

MIKRODATA'89

Date: October 25 - 29, 1989
Location: Copenhagen
Contact: American Embassy, Copenhagen
Copenhagen, Denmark
Phone: 45/1/423144
Fax: 45/01/430278

FINLAND

LINK'89
COMMUNICATIONS TECHNOLOGY FAIR

Date:	August 30 - September 1, 1989
Location:	Tampere
Contact:	Tampereen Messut OY Fach 163 33201 Tampere Finland Phone: 358/31/131110 Fax: 358/31/123888

HI-TEC'89
SPECIALIZED FAIR FOR SOFTWARE AND ENGINEERING TECHNIQUES

Date:	October 18 - 20, 1989
Location:	Tampere
Contact:	Kimmo Martiskainen Tampereen Messut Oy Fach 163 33201 Tampere Finland Phone: 358/31/131110 Fax: 358/31/123888

FRANCE

PRODUCTIQUE '89

Date: October 2 - 5, 1989
Focus On: Robotics, CAD/CAM, industrial data processing
Location: Paris
Contact: American Embassy Paris
2 Avenue Gabriel
75382 Paris Cedex 08
France
Phone: 81/3/2245000
Fax: 81/3/5894235

SICOB

INTERNATIONAL DATA PROCESSING, TELEMATICS, COMMUNICATION, OFFICE ORGANIZATION AND AUTOMATION TRADE FAIR

Date: April 14-21, 1990
Location: Paris-Nord/Villepinte
Contact: Don Dowd
Don Dowd Communications, Inc.
300 Davey Glen Road, Suite 3623
Belmont, CA 94002
Phone: (415) 593-9899
Fax: (415) 593-0937

GREECE

INFOSYSTEM (3RD ANNUAL)

Date: November 1 - 5, 1989
Location: Thessaloniki
Contact: American Embasy, Athens
91 Vasilissism Sophias Blvd., 10160
Athens, Greece
Phone: 30/1/721/2951
Fax: 30/1/722/6724

COMPUTER HARDWARE AND SOFTWARE TRADE MISSION

Date: January, 1990
Location: Athens (Spain, Italy)
Contact: Vera A. Swann
Office of Computers and Business Equipment
U.S. Department of Commerce
14th Constitution Ave., Room HCHB 2008
Washington, D.C. 20230
Phone: (202) 377-4331

HONG KONG

TELCOM CHINA'89

EXHIBITION ON TELECOMMUNICATIONS OFFICE AUTOMATION AND COMPUTER

Date: September 18 - 23, 1989
Location: Beijing
Contact: AdSale Exhibitions Services
21/F, Tung Wai Commercial Building
09-111, Gloucester Road
Wanchai, Hong Kong
Phone: 852/5/8920511
Telex: 63109 ADSAP HX

COMMTEL ASIA'89
INTERNATIONAL TELECOMMUNICATIONS EQUIPMENT, NETWORKS AND SERVICES SHOW

Date: December 5 - 8, 1989
December 4 - 7, 1990
Location: Hong Kong
Contact: Business and Industrial Trade Fairs Ltd.
4/F., China Underwriters Ctr.
88 Gloucester Road
Wanchai, Hong Kong
Phone: 852/5/756333
Fax: 852/5/8915347

HONG KONG COMPUTER EXHIBITION AND CONFERENCE

Focus On: Computer hardware and software, CAD/CAM equipment and systems, printers, peripherals
Date: May 7 - 10, 1990
Location: Exhibition Center, Hong Kong
Contact: Business and Industrial Trade Fairs Ltd.
4/F, China Underwriters Centre
88, Gloucester Rd.
Wanchai, Hong Kong
Telex: 64882

COMPUTER SOFTWARE AND HARDWARE EXECUTIVE LEVEL TRADE MISSION

Date: May, 1990
Location: Hong Kong (Shanghai, Beijing, Shenyang)
Contact: Vera A. Swann
Office of Computers and Business Equipment
U.S. Department of Commerce
14th Constitution Ave., Room HCHB 2008
Washington, D.C. 20230
Phone: (202) 377-4331

INDIA

COMPUTER SOCIETY OF INDIA'S ANNUAL CONVENTION AND EXHIBITION

Focus On:	Computer hardware, software, peripheral and accessories
Date:	September 20 - 23, 1989
Location:	Bangalore
Contact:	Computer Society of India's Institution of Engineers 15 Haji Ali Park Bombay, India 4000034

OFFICE AND BANK

OFFICE AND BANK TECHNOLOGY, COMPUTER & COMMUNICATIONS EQUIPMENT EXHIBITION

Date:	October 3 - 7, 1989
Location:	New Delhi
Contact:	Mr. David Stout Spearhead Exhibitions Limited Rowe House, 55/59 Fife Road Kingston Upon Thames Surrey K1T 1TA England Phone: 44/1/5495831 Fax: 44/1/5415657

INDONESIA

COMPUTER AND BUSINESS EQUIPMENT INDONESIA
6TH INTERNATIONAL COMPUTER AND BUSINESS EQUIPMENT EXHIBITION

Date:	March 20 - 24, 1990
Location:	Jakarta
Contact:	Andry Montgomery Ltd. 11 Manchester Square London W1M 5AB England Phone: 01/486-1951 Fax: 01/486-8773

INTEROFFICE
International Exhibition on Computers and Office Equipment

Focus On:	Hardware, software, office equipment
Date:	April 10 - 14, 1990
Location:	Jakarta
Contact:	PT Multi Media Promo Indonesia Exhibition Services 80-B JL Garuda Raya Jakarta 10620 Indonesia Phone: 413471 Fax: 4201151

ITALY

EDP USA MILAN SOLO FAIR

Date: February, 1990
Location: Milan, Rome
Contact: Vera A. Swann
Office of Computers and Business Equipment
U.S. Department of Commerce
14th Constitution Ave., Room HCHB 2008
Washington, D.C. 20230
Phone: (202) 377-4331

COMPUTER HARDWARE AND SOFTWARE TRADE MISSION

Date: January, 1990
Location: Milan, Rome (Spain, Greece)
Contact: Vera A. Swann
Office of Computers and Business Equipment
U.S. Department of Commerce
14th Constitution Ave., Room HCHB 2008
Washington, D.C. 20230
Phone: (202) 377-4331

JAPAN

MICRO-TECH

Date: October 2 -5, 1989
Location: Tokyo
Contact: American Embassy Tokyo
10-1, Akasaka 1-chome
Minato-ku (107)
Tokyo, Japan
Phone: 81/3/2245000
Fax: 81/3/5894235

NICOGRAPH'89

Focus On:	CAD/CAM and computer graphics
Date:	November 7 - 10, 1989
Location:	Tokyo
Contact:	Nippon Computer Graphics Association Ogawa Building 1-2-2 Uchikanda, Chiyodaku, Tokyo 101 Japan Phone: 03/233-3475 Fax: 03/233-3450

JAPAN OFFICE'89

Date:	November 30 - December 3, 1989
Location:	Tokyo
Contact:	American Embassy Tokyo 10-1, Akasaka 1-chome Minato-ku (107) Japan Phone: 81/3/224/5000 Fax: 81/3/589/4235

SUPER COMPUTING JAPAN'90

Date:	March 27 - 29, 1990
Location:	Tokyo
Contact:	Gerard V. Parker, President Meridian Pacific Group, Inc. 116 East Blithedale Avenue, Suite 2 Mill Valley, CA 94941 Phone: (415) 381-2255 Fax: (415) 381-1451

KOREA

U. S. PRODUCT SHOW

Date:	November 15 - 18, 1989
Location:	Seoul, Korea
Contact:	(For Massachusetts Booth) Paul Fameli Massachusetts Office of International Trade 100 Cambridge Street, Suite 902 Boston, MA 02202 Phone: (617) 367-1830 Fax: (617) 227-3488

COMPUTER HARDWARE AND SOFTWARE TRADE MISSION

Date:	September, 1990
Location:	Seoul (Osaka, Kobe, Tokyo, Japan)
Contact:	Vera A. Swann Office of Computers and Business Equipment U.S. Department of Commerce 14th Constitution Ave., Room HCHB 2008 Washington, D.C. 20230 Phone: (202) 377-4331

MEXICO

COM EXPO'89
INTERNATIONAL COMPUTER AND COMMUNICATION TRADE EXHIBITION

Focus On:	Computer hardware and software, communication equipment, office automation
Date:	September 5-7, 1989 - Guadalajara November 28-30, 1989 - Monterrey February 13-16, 1990 - Mexico City
Contact:	Marketing International Corporation P.O. Box 4749 Arlington, VA 22204-0749 Phone: (703) 685-0600 Fax: (703) 979-1503

MEXICON

Focus On:	Computers and telecommunications equipment
Date:	September 19 - 22, 1989
Location:	Mexico City
Contact:	American Consulate General, Mexico Paseo de la Reforma 305 Mexico 5, D.F. Phone: 52/5/211-0042 Fax: 52/5/511-9980

COMPUTACION SOLO FAIR

Date:	April, 1990 - Mexico City, Guadalajara
Contact:	Vera A. Swann Office of Computers and Business Equipment U.S. Department of Commerce 14th Constitution Ave., Room HCHB 2008 Washington, D.C. 20230 Phone: (202) 377-4331

THE NETHERLANDS

EFFICIENCY VAKBEURS'89
OFFICE AND INFORMATION TECHNOLOGY

Date:	September 29 - October 6, 1989
Focus On:	Computers, software and office systems
Location:	Amsterdam
Contact:	Hans Heriga RAI GEBOUW B.V. Europaplein 1078 GZ Amsterdam The Netherlands Phone: 31/20/464469 Fax: 31/20/464469

ELEKTROTECHNNIEK'89

Date:	November 13 - 17, 1989
Location:	Utrecht
Contact:	American Consulate General, Amsterdam Museumplein 19 Amsterdam, The Netherlands Phone: 31/20/64/5661 Fax: 31/20/75/2856

EUROPE SOFTWARE

Date:	May, 1990
Location:	Utrecht
Contact:	Vera A. Swann Office of Computers and Business Equipment U.S. Department of Commerce 14th Constitution Ave., Room HCHB 2008 Washington, D.C. 20230 Phone: (202) 377-4331

NORWAY

CAD/CAM 89

Date:	November 7 - 10, 1989
Location:	Sandvika
Contact:	O. Narvestad Messebyraet P.O. Box 530 1301 Sandvika, Norway Phone: 02/54/6090

DAK/DAP'89

Date: Novembere 7 - 10, 1989
Location: Sandvika
Contact: American Embassy, Olso
Drammensveien 18
Oslo 2
Norway
Phone: 47/2/44/8550
Fax: 47/2/55/8803

NOR-COM'90

INTERNATIONAL TELECOMMUNICATIONS EXHIBITION & CONFERENCE

Date: June 12 - 16, 1990
Location: Oslo
Contact: Norges Varemesse-Norwegian Tr. Fair Found
Sjolystsentret-Sjolyst Ex. Ctr
P.O. Box 130 Skoyen
N 0212, Olso 2
Norway
Phone: 47/2/438080
Fax: 47/2/431914

PHILPPINES

PHIL TELECOM'90

EXHIBITION ON TELECOMMUNICATIONS SYSTEMS, EQUIPMENT AND TECHNOLOGY

Date: September 11 - 15, 1990
Location: Manila
Contact: SHK International Services, Ltd.
22/F Tian An Centre
151 Gloucester Road
Wanchai
Hong Kong
Phone: 852/5/8326100
Fax: 852/5/8389639

PORTUGAL

INFORPOR

Focus On:	Computers
Date:	October 27 - 30, 1989
Location:	Lisbon
Contact:	American Embassy Lisbon Avenida das Forcas Armadas, 1600 Lisbon, Portugal Phone: 351/1/7266600 Fax: 351/1/7268814

SAUDI ARABIA

COMPUTER, COMMUNICATIONS & ELECTRONICS

Date:	October 4 - 9, 1989
Location:	Dhahran
Contact:	American Embassy Riyadh Collector Road M Riyadh Diplomatic Quarter Saudi Arabia Phone: 966/1/4883800 Fax: 966/1/4883237

SAUDI COMPUTER '90 - COMPUTER AND COMPUTER GRAPHICS SHOW

Date:	January 28 - February 1, 1990
Location:	Riyadh
Contact:	Andry Montgomery Group 11 Manchester Square London W1M 5AB England Phone: 01/486-1951 Fax: 01/486-6773

SINGAPORE

COMTEC
INTERNATIONAL COMPUTER AND TECHNOLOGY EXHIBITION

Focus On:	Computer systems, peripherals, accessories, services, software
Date:	September 11 - 17, 1989
Location:	Singapore, Malaysia
Contact:	ITP - Services Pte Ltd. 994 Bendemeer Rd., Suite 04-03 Singapore Phone: 2913238 Telex: 55223

MANUSOF'89

Focus On:	Software
Date:	October 4 - 7, 1989
Location:	Singapore
Contact:	American Embassy Singapore 111 N. Bridge Road #15-05 Peninsula Plaza 0617 Singapore, Malaysia Phone: 65/3380251 Fax: 65/338 5010

MUREX '89
INTERNATIONAL MILITARY SURPLUS/PRE-WAR DEFENSE

Focus On:	Computer, software, office systems, defense, security, safety, and electronic equipment
Date:	November 8 - 11, 1989
Location:	Singapore
Contact:	Anthony Ow IMS Exhibitions and Conferences Pte. Ltd. 03-04 Tong Building 302 Orchard Road Singapore 0923 Singapore, Malaysia Phone: 65/7343488 Fax: 65/7343488

SEARCC

Date:	December, 1989
Location:	Singapore
Contact:	SEARCC, c/o Institute of Systems Science National University of Singapore Heng Mui Xeng Terrace, Kent Ridge Singapore 0511, Malaysia Phone: 7722094 Fax: 7782571

SINGAPORE INFORMATICS

Focus On:	CAD/CAM, CAE, Artifical intelligence, microcomputers
Date:	December 6 - 10, 1989
Location:	Singapore
Contact:	David Brantley, Commercial Attache American Embassy 111 North Bridge Rd., # 15-05, Peninsula Plaza Singapore 0617, Malaysia Phone: 3389722 Telex: RS/25079/SINGTC

INFOTECHASIA'90
COMMUNICASIA'90

Focus On: Computers, software, office systems, and communications/ telecommunications
Date: May 29 - June 1, 1990
Location: Singapore
Contact: Ms. Christine Loh
Singapore Exhibition Services Pte. Ltd.
11 Dhoby Ghaut #15-09
Singapore 0922
Singapore, Malaysia
Phone: 65/3363516
Fax: 65/3395651

SPAIN

COMPUTER HARDWARE AND SOFTWARE TRADE MISSION

Date: January, 1990
Location: Madrid (Italy, Greece)
Contact: Vera A. Swann
Office of Computers and Business Equipment
U.S. Department of Commerce
14th Constitution Ave., Room HCHB 2008
Washington, D.C. 20230
Phone: (202) 377-4331

SIMO-OFFICE EQUIPMENT AND COMPUTERS

Date: November 17 - 24, 1989
Location: Madrid
Contact: American Embassy Madrid
Serrano 75
Madrid, Spain
Phone: 34/1/276/3400
Fax: 34/1/275/8655

SWEDEN

DATA-OFFICE

Date:	October 2 - 6, 1989
Location:	Stockholm
Contact:	American Embassy Stockholm Strandvagen 101, S-115 27 Phone: 46/8/7835300 Fax: 46/8/6609181

SWITZERLAND

BUFA

TRADE SHOW FOR AUTOMATION, EQUIPMENT, ORGANIZATION, TELECOMMUNICATIONS AND SYSTEMS

Focus On:	Computers, software, office systems, communications/ telecommunications
Date:	September 26 - 30, 1989
Location:	Basel
Contact:	Schweizer Mustermesse Postfach 4021 Basel Switzerland Phone: 41/61/262020 Fax: 41/61/6920617

TELECOM'91
6TH WORLD TELECOMMUNICATIONS EXHIBITION

Date:	October 8 - 15, 1991
Location:	Geneva
Contact:	T.I.A. 150 North Michigan Avenue Chicago, IL 60601 Phone: (312) 782-8597 Fax: (312) 782-3617

TAIWAN

COMPUTEX TAIPEI

Date:	October 13 - 19, 1989
Location:	Taipei
Contact:	American Institute in Taiwan Trade Center 600, Min Chuan E. Road Taipei, Taiwan Phone: 886/2/71/32571 Fax: 886/2/7181377

THAILAND

COMPUTER

Date:	October 5 - 8, 1989
Location:	Bangkok
Contact:	American Embassy Bangkok "R" Floor Shell Building 140 Wireless Road Bangkok, Thailand Phone: 66/2/253/9260/2 Fax: 66/2/253/4448

OFFICE AND TELEMATIC
INTERNATIONAL TELECOMMUNICATIONS &
INFORMATION TECHNOLOGY EXHIBITION

Date:	November 1 - 5, 1989
	November 2 - 5, 1990
Location:	Bangkok
Contact:	Thailand Exhibitions & Management Co., Ltd
	87 Nailert Bldg.
	Sukhumvit 5
	Bangkok 10110
	Thailand
	Phone: 66/2/2528061-5
	Fax: 66/2/2545737

TURKEY

COMMUNICATIONS TURKEY '89

Date:	November 1 - 5, 1989
	November 1 - 5, 1990
Location:	Istanbul
Contact:	Kallman Asociates
	5 Maple Court
	Ridgewood, NJ 07450
	Phone: (201) 652-7070
	Fax: (201) 652-3898

UNITED KINGDOM

"CIM" COMPUTERS IN MANUFACTURING

Date:	October 10 - 13, 1989
Location:	Birmingham
Contact:	American Embassy, London
	24/31 Grosvenor Square
	London W1A 1AE
	England
	Phone: 44/1/4999000
	Fax: 44/1/4914022

THE MACUSER '89
3RD ANNUAL MACHINTOSH EXHIBITION AND CONFERENCE

Date:	November 1 - 4, 1989
Location:	London
Contact:	Andry Montgomery Ltd. 11 Manchester Square London W1M 5AB England Phone: 01/486-1951 Fax: 01/486-8773

SUPERCOMPUTING EUROPE '90

Date:	January 10 -12, 1990
Location:	London
Contact:	Gerald Parker, President Meridian Pacific Group, Inc. 116 East Blithedale Avenue Mill Valley, CA 94941 Phone: (415) 381-2255 Fax: (415) 381-1451

COMMUNICATIONS'90

Date:	May 15 - 18, 1990
Location:	Birmingham
Contact:	Industrial & Trade Fairs Ltd. Radcliff House Blenheim Court Solihull West Midlands B91 2BG England Phone: 44/21/7056707 Fax: 44/21/7054380

USSR

PERSONAL COMPUTERS'89

Date: October 11 - 17, 1989
Location: Minsk
Contact: Roman Shukman, President
Orbis International Ltd.
3301 El Camino Real, Suite 200
Atherton, CA 94025
Phone: (415) 367-6543
Fax: (415) 368-7717

VENEZUELA

INFORVEN'89

Focus On: Microcomputers and associated products
Date: September 20 - 23, 1989
Location: Caracas
Contact: American Embassy Caracas
Avenida Francisco de Miranda y
Avenida Principal de la Floresta
Caracas, Venezuela
Phone: 58/2/2846111
Fax: 58/2/2618815

VENEZUELA COM EXPO

INTERNATIONAL COMPUTER AND COMMUNICATIONS EXHIBITION

Date: April 2 - 5, 1990
Location: Caracas
Contact: Marketing International Corporation
P.O. Box 4749
Arlington, VA 22204-0749
Phone: (703) 685-0600
Fax: (703) 979-1503

WEST GERMANY

SYSTEMS
COMPUTERS AND COMMUNICATIONS-INTERNATIONAL USER CONGRESS AND INTERNATIONAL TRADE SHOW

Date: October 16 - 20, 1989
Location: Munich
Contact: (For Massachusetts Booth)
Pamela Tomkinson
Massachusetts International Trade Council, Inc.
100 Cambridge Street
Boston, MA 02202
Phone: (617) 367-1830
Fax: (617) 227-3488

Munchener Messe und Ausstellung GmbH
Postfach 121009
8000 Munchen 12, West Germany
Phone: 089/51070
Fax: 089/5107506

SYSTEC
INTERNATIONAL TRADE FAIR AND CONGRESS FOR COMPUTER INTEGRATION

Focus On: Flexible automation systems, software, computer systems, networks, test systems, logistics and peripherals.
Date: October 22 - 26, 1989
Location: Munich
Contact: Munchener Messe und Austellung GmbH
Postfach 121009
8000 Munchen 12, West Germany
Phone: 089/ 51070
Fax: 089/ 5107506

CEBIT HANNOVER FAIR

Date: March 21-28, 1990
March 13-20, 1991
March 11-18, 1992
March 24-31, 1993
March 16-23, 1994

Location: Hannover

Contact: (For Massachusetts Booth)
Pamela Tomkinson
Massachusetts International Trade Council, Inc.
100 Cambridge St., Suite 902
Boston, MA 02202
Phone: (617) 367-1830
Fax: (617) 227-3488

Donna Hyland
Hannover Fairs USA, Inc.
103 Carnegie Center
Princeton, NJ 08540
Phone: (609) 987-1202
Fax: (609) 987-0092

ONLINE'90

EUROPEAN CONGRESS FAIR FOR TECHNICAL COMMUNICATIONS

Date: February 13 - 16, 1990

Location: Hamburg

Contact: Online GmbH
Kongress und Messen fur Technische Kommunikation
Postfach 100866
5620 Velbert 1
West Germany
Phone: 49/2051/23071
Telex: 8597500

COMPUTER-SCHAU
COMPUTER, SOFTWARE AND EQUIPMENT EXHIBITION

Date:	March 14 - 18, 1990
Location:	Dortmund
Contact:	Westfalenhalle GmbH Rheinlanddamm 200 4600 Dortmund 1, West Germany Phone: 0231/1204521 Telex: 231474

INFOBASE
INTERNATIONAL EXHIBITION AND CONVENTION ON INFORMATION MANAGEMENT

Focus On:	Online services, communication techniques, data-transmission techniques, communications-and databank, software for PCs and mainframes, inhouse databanks and archive systems, text-and mailsystems, EDP hardware.
Date:	May, 1990
Location:	Frankfurt
Contact:	Messe Frankfurt GbmH Postfach 97 01 26 D-6000 Frankfurt 1, West Germany Phone: 069/75750 Fax: 069/75756433

CAT
COMPUTER AIDED TECHNOLOGIES IN MANUFACTURING, INTERNATIONAL EXHIBITION AND USER CONGRESS

Focus On:	CAD, CAM, CAE, CIM, Artificial Intelligence
Date:	May 29 - June 1, 1990
Location:	Stuttgart
Contact:	Stuttgarter Messe-und Kongressgesellschaft mbH Kochenhof 16, Postfach 990 7000 Stuttgart 1 West Germany Phone: 0711/25890 Fax: 0711/2589440

TELEMATICA'90
INTERNATIONAL TELECOMMUNICATIONS EXHIBITION

Date:	June 11 - 14, 1990
Location:	Stuttgart
Contact:	C.E.S. (Overseas) Ltd. Bridge House 181 Queen Victoria Street London EC4 England Phone: 44/1/2360911

IMPRINTA'92
INTERNATIONAL CONGRESS AND EXHIBITION FOR COMMUNICATIONS TECHNIQUES

Date:	February 19 - 25, 1992
Location:	Dusseldorf
Contact:	Dusseldorf Trade Shows The Empire State Building, Suite 4621 New York, NY 10118 Phone: (212) 239-3750 Fax: (212) 239-3174

INTERNATIONAL DISTRIBUTION, MARKET PENETRATION STRATEGIES: A LEGAL OVERVIEW

INTRODUCTION

There are a variety of legal relationships and business entities that exporters of computer software and information technology products should consider in developing international market penetration strategies. For example, one can choose to sell in a foreign country directly, or use a sales agent, foreign distributor, or even establish a foreign subsidiary corporation. The sales method or business arrangement selected for a particular country will depend on such variables as local laws, customs, and preexisting distribution channels. While the legal relationships and business entities used for international distribution often parallel those used in the U.S., there are countries where the familiar forms will change or will not exist at all. This paper will provide an overview of the business arrangements most often used by companies distributing information technology products in foreign countries and will identify some of the more important legal issues that need to be addressed when determining market penetration strategies.

FORMS OF INTERNATIONAL MARKETING: A PRIMER

The basic business methods and arrangements useful in international distribution can be organized into three categories: (a) direct sales, (b) sales through an intermediary (foreign or domestic), and (c) foreign technology licensing (including offshore production). As explained below, there are various alternatives within each category, and various combinations among the categories as well. The following paragraphs briefly describe these alternatives and Section IV below provides a more thorough exploration.

DIRECT SALES

When selling "directly" to a foreign purchaser, a company typically sells through its own employees, either at home or in the foreign country. The typical methods and common business arrangements employed in direct sales include:

(1) filling (in the U.S.) orders received directly from purchasers in foreign countries,
(2) retaining foreign sales agents,
(3) opening foreign sales branches, and
(4) establishing foreign subsidiaries.

SALES BY A FOREIGN OR DOMESTIC INTERMEDIARY

This category entails use of a foreign or domestic intermediary to sell products abroad. Such an arrangement differs from an agency arrangement in that typically the foreign or domestic intermediary purchases the product directly and then resells the product overseas. Common methods employed in sales to or through intermediaries include:

(1) sales to foreign distributors,
(2) sales to export trading companies,
(3) using piggyback distribution agreements, and
(4) entering into joint ventures.

LICENSING TECHNOLOGY (Including Offshore Production)

The third major method of exporting is the direct license of technology to a foreign firm which can either use or publish the product in the foreign country. The licensee typically agrees to pay a royalty for such rights. Common methods of licensing technologies include:

(1) direct license to manufacture and sell ("publication"),
(2) license to manufacture ("offshore production"), and
(3) license to use, as part of a service.

FACTORS TO BE CONSIDERED IN CHOOSING BETWEEN METHODS OF DISTRIBUTION

To determine which form of distribution is best, one should consider at least seven factors. We suggest these factors be remembered by the acronym "TRIP WIRES," explained as follows:

T Taxation - foreign and U.S. tax consequences.

R Risk - the risk your company is willing to accept as part of the transaction (including the risk of loss of goods in transit).

I Intellectual Property Protection - the degree to which it is available; (intellectual property includes copyrights, patents, trade secrets, trademarks, trade names and the like).

P Product Type - the nature of the product and type of foreign customers.

W Where - the country or countries where the product is to be exported and the impact of local laws.

I Income - the anticipated gross income and/or sales volume that can be reasonably expected from the market.

RES Resources Available - the amount of financial and human resources that can be committed to the particular foreign market.

A description of the business arrangements and methods of distribution for international marketing follows.

DIRECT SALES

DIRECT EXPORT

The easiest export transaction is directly selling the product to a purchaser/user outside of the United States. No foreign presence is required. Title (or if appropriate, the license) is generally deemed to pass to the buyer when the seller places the product with a carrier for shipment. Direct export sales usually result from unsolicited inquires, or from advertisements placed in U.S. publications distributed abroad or in advertisements placed in foreign publications. The issues of most serious concern when exporting directly are: compliance with the U.S. export regulations; the ability to protect infringements of proprietary rights (or maintain a technology "license"); and the ability to provide product support.

SALES AGENT

A step beyond that of direct export is the retention of a foreign sales agent to actively solicit foreign sales. In the U.S., a sales agent is typically an independent person or entity who receives a commission based upon sales achieved. In many foreign countries, however, the term "sales agent" may characterize a number of different relationships which may not strictly be construed as agency relationships in the United States. For example, France and Germany provide two or three forms of agency which differ by function and authority. Often, the authority of an "agent" is set statutorily, and may not be restricted contractually. Typically, however, the agent serves as essentially a commissioned sales representative of one's company to coordinate the sale of a product to a foreign purchaser in exchange for a commission on the sales price.

The advantages of using a foreign sales agent, as opposed to selling directly, include: having someone who knows the market, language, and culture; having the ability to control marketing methods and product prices; and having someone who can locally support the product.

The issues of concern in retailing a foreign sales agent are:

- Foreign laws (especially European) may restrict the ability to terminate a relationship with a sales agent;

- The U.S. company bears the risk of loss or damage to the product until it is delivered to the purchaser;

- The U.S. company may be liable for the acts and representations of its sales agent;

- The U.S. company may be subject to foreign taxation in certain countries where the appointment of an agent, who has the authority to accept orders or concludes contracts, constitutes "doing business";

- Certain countries require that agency contracts be registered with a governmental authority and may require disclosure of certain elements, including the amount of commissions; and

- Foreign laws may limit the commission amounts to an agent and may require that the agency be exclusive.

FOREIGN SALES BRANCH

A foreign sales branch is a direct legal presence in a foreign country. Typically, a foreign sales branch can only be established after it has been registered with the appropriate foreign commercial registry administration. This is usually a simple and inexpensive process involving submission of documents and a power of attorney setting forth the branch manager's authority. The use of a foreign branch may be desirable because it is often easier to dismantle than is a foreign subsidiary or agency. Issues of concern in setting up a foreign sales branch include:

- The foreign sales branch exposes its U.S. parent's assets to the jurisdiction of the foreign country;

- Some countries (Nigeria and India, for example) prohibit the establish-

ment of foreign branches altogether;

- Local laws may statutorily grant the branch manager powers beyond those contemplated by the parent company;

- Registration may require the disclosure of the financial details of the U.S. parent company's worldwide operation; and

- As a general rule, the profit or loss of a foreign branch is included immediately in a company's U.S. income for taxation purposes. (There may also be additional foreign tax benefits or drawbacks associated with the use of a foreign branch.)

FOREIGN SUBSIDIARY

The most complex method of establishing a presence in a foreign market is the creation of a foreign subsidiary corporation. The laws of most foreign countries provide for several forms of limited liability entities. While most of these limited liability companies will have the characteristics of U.S. corporations, their specific nature will depend upon the laws under which they are formed.

If the establishment of a foreign subsidiary is affordable, and if the anticipated sales volume is high enough, the advantages of using a foreign subsidiary in most countries (with few notable exceptions) outweigh the concerns. Some of the advantages include the fact that it establishes the company in the local market as a legitimate local entity; it provides legal insulation from the U.S. parent corporation; it may more easily adapt to the cultural and language differences; and it generally provides better access to local legal process for such actions as collections and enforcement of license agreements. Importantly, a foreign subsidiary can also provide greater opportunities for financing investments, including the opportunity for local investors to participate in the enterprise.

The issues of concern using a foreign subsidiary include:

- Foreign subsidiaries are typically the most expensive foreign business form to create and operate;

- Foreign laws may require a percentage of foreign ownership and may require foreign directors;

- It may be hard to dismantle a foreign subsidiary; and
- A foreign subsidiary is subject to local taxation.

SALES BY FOREIGN INTERMEDIARIES

FOREIGN DISTRIBUTORS

Appointing a foreign distributor provides a more significant presence in a foreign market than a foreign sales agent. Unlike a sales agent, a foreign distributor is an independent contractor which purchases the product for its own account for later resale. The distributor takes title to the goods upon delivery and assumes the risk of loss or damage to the goods thereafter. The distributor bears the cost of warehousing and servicing the product and is responsible for setting prices and for obtaining and maintaining the sales and service force. Unlike an agent, a distributor cannot contractually make committments on behalf of the U.S. company and, thus, the company will not be responsible for the distributor's acts. Like an agent, however, the distributor may be difficult to terminate.

EXPORT TRADING COMPANIES

The enactment in 1982 of the Export Trading Company Act provided a new method for foreign distribution of American products. Basically, an export trading company purchases a U.S. firm's product in the United States and then the export trading company becomes the exporter for sales in foreign countries. Despite hopes expressed at the time of enactment of the Act, export trading companies have not developed into a major method of distribution.

"PIGGYBACK" ARRANGEMENTS

"Piggybacking" is a distribution process whereby a contract is drawn up with another company to use that company's preexisting channels of distribution. This may involve

packaging and marketing of a product under the other company's trademarks or may merely involve the distribution of the product in its existing form. The advantages of establishing a piggyback relationship are that no foreign presence is required and it may be the easiest and quickest way to penetrate international markets. The disadvantages, however, may outweigh the advantages. They include the possible loss of product identity, loss of control over product support and services, and a lower return on sales. Moreover, the other company has to be indemnified for claims of copyright and trademark infringement and may be required to restrict the development and distribution of products that compete with that of the other company, both internationally and domestically. The biggest disadvantage of this relationship is that the entire worldwide marketing effort may hinge upon the continuation and success of the piggyback relationship.

JOINT VENTURE PARTNER

A joint venture is a middle-of-the-road alternative between a foreign subsidiary and a distributor. This relationship is legally the most complex foreign sales relationship and may conceptually be thought of as a partnership between the exporter and the local government or company. Generally, the joint venture may call for contributions of capital and technology from both partners which will then manufacture and/or improve or adapt the product for the local market. Some countries, most notably the People's Republic of China, may require the use of joint venture in order for a foreign producer to enter that local market.

LICENSING TECHNOLOGY

DIRECT LICENSE TO SELL

A common method of entering international markets, especially computer software markets, is by licensing the rights to manufacture and sell (or in the case of software to localize and sublicense) the product in a foreign market. The licensing of a foreign entity to undertake the manufacturing or localization and then to reproduce and sell the product in that market may prove the most cost effective way for products (especially

volume software) to be distributed. Historically, many products which do not involve use of the written word have not required significant adaptations in local markets. Similarly, "systems" computer software has not required significant alteration for international sales. However, "applications" software, as well as other products which intensively rely on the use of language, usually require localization of the product to local language and culture. At the very least, the product's instruction manuals, technical specifications, and the like will have to be translated to the local language.

Specific concerns that should be addressed in such a licensing arrangement include the ability to control the local entity by contract; the potential importation into the U.S. of "grey market" product; the application of foreign "technology transfer laws" (which may place restrictions on royalties and ownership of the software); the need to register the license agreement and copyright, patents and trademarks; and the ability to protect the intellectual property rights. One additional concern is that in order to reproduce software, the licensee must usually be given access to proprietary information such as computer source code.

LICENSE TO MANUFACTURE ("Offshore Production")

Granting a license to manufacture (and not to sell), often called "Offshore Production," is a means for lowering production costs for sales in foreign markets. Manufacturing agreements for many products may prove complex, however, requiring specific attention to details such as confidentiality, currency fluctuation, letters of credit, quality control and technology transfer laws.

LICENSE TO USE, AS PART OF A SERVICE

Another less common type of export involves licensing the use of computer software to perform services in foreign countries. For example, certain financial services, design services, and language translation services, which are assisted by computer software, can be marketed internationally, and can be performed in foreign countries by local licensees. The form of the legal entity and the terms of the license will depend upon all of the TRIP WIRES factors mentioned in Section III above. Typically, the licensee will be subject to greater scrutiny than a distributor. However, because a source code does not usually have to be delivered to the licensee, it is easier to protect intellectual property rights.

SELECTED TAX ISSUES

The complexity of U.S. taxation of foreign income as well as foreign taxation of a U.S. company's local activities makes it impractical in this paper to provide detailed information regarding the tax consequences of a particular export transaction. Prior to selecting a particular form of business or method of distribution, international tax professionals should be consulted to determine the probable foreign and U.S. tax consequences of your plans. In hopes of shedding some light on the major issues, however, some general information and definitions are set forth below.

U.S. TAXATION OF FOREIGN INCOME

The general rule of U.S. taxation is that income generated by a citizen or domestic entity is taxable by the U.S. regardless of where it is earned. The taxpayer will be credited, however, for taxes paid to a foreign jurisdiction on that income.

For foreign subsidiaries, attention should also be paid to the provisions of the Internal Revenue Code relating to Controlled Foreign Corporations ("CFCs"). A CFC can generally be defined as a foreign corporation in which "United States Stockholders" own more than 50% of the corporation's stock. Under provisions of "Subpart F" of the Internal Revenue Code, the U.S. shareholders of a CFC may be subject to tax on their proportionate shares of certain CFC income, including rental and royalty income. To lessen the potential tax impact of a CFC, a tax professional should be consulted prior to incorporation.

FOREIGN TAXATION OF LOCAL ACTIVITIES

A company's exposure to tax liabilities for income secured in a foreign country turns on that country's local law, applicable tax treaties, and the extent to which the U.S. company is deemed to be doing business in that country. Many foreign countries withhold 15% to 30% of amounts payable to U.S. exporters. Some countries tax royalty payments at even higher rates. Deductions may be allowed, however, for the executive and administrative expenses incurred in generating loc@sales.

DOMESTIC INTERNATIONAL SALES CORPORATIONS ("DISCS") AND FOREIGN SALES CORPORATIONS ("FSCS")

DISCs and FSCs (pronounced "disks" and "fisks") are devices allowed by U.S. tax laws to encourage exporting, by deferring or waiving the tax on exporting income. Prior to the change in tax laws effective January 1, 1985, DISCs were a popular tax deferral device. A DISC was (and may still be in certain circumstances) a U.S. corporation (typically established as a subsidiary of a U.S. corporation) that operated in the U.S. as a middleman to receive income from exporting activities. Prior to January 1, 1985, the parent company would usually sell its product to its DISC at a wholesale price and the DISC would sell in foreign markets at the market price. A DISC never paid tax. Instead, 57.2% of the income was deemed distributed to its parent, which paid tax as if it had received a dividend. The remaining 42.5% escaped tax until it was actually distributed. The chief advantage was tax deferral combined with the ability to borrow DISC funds for working capital.

The 1984 law change did not repeal the DISC rules, but changed them enough to make the DISC less useful. The new laws introduced the FSC, however, which in many ways is superior to the DISC. (The FSC was introduced because the DISC was challenged as a violation of GATT (General Agreement on Trade and Tariffs).

Since January 1, 1985 the FSC has become the popular tax device for avoiding (rather than deferring) taxation of certain foreign income. A FSC is a real corporation which must be established outside the U.S., and which can take advantage of the low business tax rates which exist in foreign countries. Popular countries for FSCs include the Virgin Islands and Guam. While details of the FSC are too complex for this paper, a FSC must have less than 25 shareholders, cannnt issue preferred stock, must have an office outside the U.S. with books and records kept there and in the U.S., and must have at least one director who is not a resident of the U.S. and is living outside the U.S.

The amount of FSC income that is exempt is generally 30% of the income derived from third party sales and 15/23 of the income derived from sales between the parent and the FSC. The remainder is taxed at normal rates.

CONCLUSION

Today, computer technology has reached the farthest corners of the globe. The technological superiority of U.S. information technology products provides tremendous opportunities for U.S. firms to successfully penetrate many foreign markets. With all the countries and all the alternative methods of doing business in foreign countries, however, it may be difficult to develop a clear strategy of how to penetrate any single foreign market. Good trade consultants and international lawyers can help simplify these complex issues and can ease entry into an international market. We advise that the foreign market be selected first, and then with the assistance of experienced professionals, the market penetration strategy which will work best in that market should be determined.

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LEGAL PROTECTION OF PROPRIETARY SOFTWARE IN FOREIGN COUNTRIES: AN OVERVIEW

A major planning issue in exporting software is how or whether proprietary rights in a software asset can be legally protected in a foreign market. Before a vendor exports software or enters into a license, marketing or other distribution agreement with an entity or individual in a foreign country, it should first evaluate how or whether software may legally be protected against unauthorized copying and distribution and other acts of piracy.

The legal means for protecting proprietary software varies from country to country, and in some cases there is no statutory protection. The availability of statutory protection in foreign markets is important, particularly for mass marketing software, since a minimum level of legal protection is available even if copies of the software are sold rather than licensed or if a licensing contract is not enforceable. For example, when you buy a book there is no sales contract which restricts your use of the book. The copyright notice in the book, however, gives the copyright owner certain statutory rights including the right to prevent unauthorized copying and distribution.

TYPES OF PROTECTION

The most applicable intellectual property statues are copyright, patent and trademark. Copyright and trademark protection are the most often available. Patent protection is generally not available. Copyright law protects the form of expression of the software or code images but not the algorithms or ideas embodied in the software. Trademark law protects the brand name or logo for a software product or family of products but does not protect the contents of the software. To protect software when no statutory protection is available, or as a second level of protection, a vendor must rely on contract law and take the actions necessary to make a contract enforceable in the foreign country. Confidentiality provisions in a contract can be used to protect the algorithms and other

design aspects of the software.

Because contracts are not used or their enforceability is disputed, most U.S. software vendors rely upon copyright protection for mass distributed software. While the availability of copyright protection for software in the U.S. is well settled, its availability in overseas markets is by no means certain. As a result, the availability of copyright protection should be carefully determined before introducing a software product into a country. Statutory protection by copyright is extremely important for microcomputer software as there remain serious questions regarding the enforceability of unilateral software licenses, particularly if the agreements are in English and are with an individual from a non-English speaking country.

U.S. licensors of more expensive mainframe and mini-computer software, an environment in which a signed license agreement generally is used, usually rely upon trade secret protection as the primary mechanism for protecting their software. This is implemented by contractual provisions in the license agreement. There are pitfalls in assuming that trade secret protection will be available when marketing software overseas or that it will provide the same remedies that are available in the U.S.

Even where contractual secrecy and non-disclosure provisions are enforceable, civil code countries generally do not have the common law injunctive remedies most useful to preventing the use or disclosure of trade secrets. Many foreign jurisdictions will not provide injunctive relief under a contract (as opposed to under a copyright or trademark statute) unless the contract expressly authorizes this remedy. Even Japan does not have effective remedies for contempt of an injunctive relief order. Instead, the software vendor may be left with a damages remedy for breach of contract, long after its secrets are in the public domain.

Notwithstanding the difficulties of enforcement in some countries, contractual provisions regarding the nondisclosure of computer software may provide the licensor with the best protection available in an international transaction.

MAKING THE MARKETING DECISION

For vendors of mass-marketed software, the business decision as to whether to enter a particular international market is often based on whether the market can be penetrated

quickly and extensively and then whether the vendor can stay ahead of pirates by enhancements and new products. Another consideration to the vendor is that its product will often be marketed there on an unauthorized basis anyway so the threat of piracy should not be an absolute deterrent. In other words, the uncertainty of legal protection for software should not be the only factor in a marketing decision. For vendors of more expensive software, in addition to contractual confidentiality provisions, technical protections such as links to specific CPUs and self-destruct routines are often used in international licensing transactions as a practical means of enforcement.

In summary, international software protection is a dynamic area which needs monitoring almost on a daily basis. The analysis of how or whether some form of legal protection is available in a foreign market should begin with the following questions:

1. Is software protected by copyright law either expressly by statute or through court decision, and, if so, are there any limitations such as exclusions based on certain types of works and date of creation?

2. If copyright protection is available, does the foreign country belong to the Universal Copyright Convention or Berne Convention so that a U.S. vendor has the protection of the foreign laws by virtue of U.S. membership in the UCC and Berne Convention or is there a bilateral agreement such as with Singapore which provides such protection?

3. Is trade secret protection recognized beyond that implemented in confidentiality provisions in the license contract? Can the owner obtain meaningful injunctive relief against disclosure of confidential information? Is there a statute under which technology embodied in the software goes into the public domain after a specified period or under which compulsory licenses are mandated?

4. Are any government approvals necessary for a license contract to be enforceable in the foreign country?

5. Should (and can) the software product's trademark be registered prior to marketing?

6. What remedies are available for infringement of proprietary rights under the copyright and trademark laws? How quickly can relief be obtained?

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INTERNATIONAL PROTECTION FOR COMPUTER PROGRAMS

On a jurisdiction by jurisdiction basis, relevant legislation and cases that apply intellectual property protection to computer software are summarized. Where available, information on special studies, reports of governmental agencies, or legislative bodies are summarized as well. There has been no attempt to include a summary of the many articles discussing this topic in technical, scholarly, or legal journals.

COUNTRY-BY-COUNTRY SURVEY OF PROGRAM PROTECTION

ARGENTINA

In Argentina, the National Registry of Copyrights will accept computer programs for registration under the voluntary registration system in place there. Copyright protection has been afforded to computer programs of foreign origin under the Argentine copyright law based on the principles of the Universal Copyright Convention. Other cases are pending in the courts. A commission is considering special draft legislation to protect computer software.

AUSTRALIA

In Australia computer programs are protected by copyright law. On June 7, 1984, the Australian Parliament enacted the Copyright Amendment Act of 1984 to modify the Australian Copyright Act of 1978 to "end the state of uncertainty regarding the legal protection of computer software..." by specifically including computer programs in the

copyright law as a type of literary work. The Australian Attorney General, in introducing the legislation, stated that it was "a short-term measure to enable a full review of the long-term policy on the protection of computer software."

This view was reaffirmed by the Australian delegation to the 1985 Meeting of the Committee of Experts convened by the World Intellectual Property Organization. However, to date no amendment to the law in Australia regarding computer program protection has been introduced.

The principal features of the amended Australian law pertaining to computer software include:

- the specific inclusion of computer programs as literary works;
- the protection of programs in either source or object form irrespective of their medium of fixation;
- modification of the definition of adaptation to include translation of a program from one high-level programming language to another as well as conversion from source to object form;
- strengthened sanctions against advertising and distribution of unauthorized copies of programs; and
- permission for owners of authorized copies of programs to make back-up copies unless specifically prohibited by the copyright owner.

BRAZIL

Copyright protection is afforded to computer programs in Brazil to take into account the "peculiarities inherent in computer programs." Essentially, the protection is a 25-year duration copyright regime in which the term of protection runs from the date the program is first commercialized anywhere in the world. Protection, in accordance with Brazil's obligations under the Berne Convention is automatic, and is not subject to any formalities. However, as in many Latin American jurisdictions, there is a voluntary registration system under the general supervision of the CNDA (the National Copyright Council) which has assigned the actual responsibility for registration to INPI (the

National Institute for Industrial Property) which also administers the patent system. The registration process is simple and no fee is charged for the service. The major benefit of registration is the procedural advantage arising from the legal record of authorship and ownership. Transfers and assignments of copyright also may be registered. If INPI refuses to register a program, the decision may be appealed to CNDA, which, after due consideration of the advisory opinion of SEI (the Special Secretariat for Informatics), will rule on the decision.

The law also establishes that the rights in a program, unless otherwise stipulated in a contract establishing a "work relationship," belong exclusively to the employer. It also provides that when a person is authorized by contract to create a derivative work, the person so authorized owns the rights to the derivative work and may "exercise the rights autonomously."

Article 7 establishes limits on the rights of program copyright owners by providing that the following acts are not an infringement:

- reproduction necessary for use;
- partial citation for teaching;
- similarity to another program when due to "functional characteristics of its application, or by the need to comply with legal precepts, regulations, technical norms, or by the limitation of alternative forms of its expression;" or
- the integration of the program within an application solely for the use of the person making the integration.

The right to withdraw a work from the market recognized in Brazilian copyright law is also specifically recognized in Article 25 of the software copyright law, but it entails an obligation to compensate third parties for any damages arising from the withdrawal of the program during its period of technical validity. The period of technical validity is a time period determined by the owner of the rights in the program.

The Brazilian law couples with its provision of copyright protection a rather complex system to regulate and control access to the Brazilian software market. Fundamentally, a program must be "cataloged" with SEI before it can be legitimately commercialized in Brazil. This cataloging must be renewed every three years. This process does not, in

any way, affect the copyright protection afforded a program which exists whether or not the program is approved for commercialization.

The key to the cataloging process is the existence or non-existence of a national similar. If SEI determines that a national similar exists, the request for cataloging will be denied. In making this determination as to whether a Brazilian program is similar, SEI will consider:

- whether the local program is functionally equivalent it should:

  1)be original and developed independently,

  2)have substantially the same performance, characteristics, considering the type of application for which it is destined, and

  3)operate on similar equipment in a similar processing environment.

- whether it observes pertinent established national standards, and

- whether it executes substantially the same functions, considering the type of application for which it is destined and the characteristics of the national market.

The determination must be made within 120 days from the time of application, if not, the cataloging or renewal is automatically granted. If a cataloging request is refused the SEI must justify the refusal in a written decision which may be appealed by one or more of three ways. First, the decision may be appealed internally within SEI. Second, the decision may be appealed to CONIN, the cabinet level informatics policy body. Third, the decision can be appealed to the Brazilian courts. In December, 1987, SEI refused to allow commercialization of the Microsoft MS-DOS 3.0-3.2, determining that given the conditions in the national market a functionally equivalent program existed in Brazil. That decision has been overturned by an appeal to CONIN.

CANADA

Under the amendments to the Canadian Copyright Law effective June 8, 1988, computer programs are defined as literary works, regardless of the medium of expression, and will be eligible for full copyright protection for the life of the creator plus 50 years. This treatment follows Canadian case law to date and will ensure continuity of protection.

There are two exemptions from liability for copyright infringement relating specifically to computer software. The first allows owners of a lawful copy of a computer program to alter or adapt it to the extent necessary for their personal use without infringing copyright. The second allows limited making of a single back-up copy, as present storage media for computer programs are very fragile. In effect, the new law allows what has become standard practice in the industry.

Computer programs are protected by copyright even if they were created prior to the effective date of the amendment. However, any alleged civil infringement or criminal offense that occurred prior to the tabling of the amendment will be adjudicated on the basis of the law in force at the time of the alleged infringement.

CHILE

Computer programs may be registered in the office of the Curator for Copyrights of Chile. There is no case law thus far on program copyright in Chile.

CHINA

The current draft copyright law of the People's Republic of China contains no specific provisions for the protection of computer programs. Patent protection is not precluded, and both copyright and sui generis protection are being studied. The Ministry of Electronic Industries continues to study the topic.

COLOMBIA

On February 15, 1988, the Director of Authors' Rights in the Ministry of the Interior issued an opinion clearly stating that software was a work of authorship protected by the Colombian Copyright Law.

DENMARK

Present academic and official views are that computer programs are protected by copyright. Amendments to clarify the copyright law in this respect are planned.

DOMINICAN REPUBLIC

In July 4, 1986, the Dominican Republic enacted a comprehensive revision of its copyright law. Article 2 of the new law extends protection to all literary and artistic works "including but not limited to... computer programs and data bases."

ECUADOR

In Ecuador the Office of National Registration of Copyrights will accept programs for registration.

FINLAND

No cases on the copyright status of computer programs have been decided in Finland, but the government of Finland has stated in its report on copyright and computers that it intends to modify its copyright law to remove any doubt that copyright applies to computer programs. A bill to amend the copyright law accordingly is in the final stages of governmental review.

FRANCE

On June 17, 1985, the French Senate approved a bill which became law No. 85-66 of July 3, 1985, specifically including "les logiciels" (software) among the categories of copyrighted works in article 3 of the French copyright law.

In a departure from traditional French copyright law, the new law provides that copyright in a computer program created by a salaried author, unless otherwise stipulated, belongs to the employer. The law permits only limited copying of programs in two instances, for archival purposes, and copying necessary for the use of the program. The new law limits the term of copyright in a program to 25 years from its date of creation, and adopts the principle of reciprocity by providing that foreign programs will be protected by copyright in France only if the foreign State provide such protection for French software. The new law became effective on January 1, 1986. Until that time software in France enjoyed the full protection of the French copyright law.

Patent protection is generally unavailable for computer programs in France. Computer programs per se are declared to be unpatentable by section 6(c) of the French Patent Law of July 13, 1978. However, inventions which incorporate computer programs may be protected under French law.

FEDERAL REPUBLIC OF GERMANY

On June 24, 1985, the German Parliament passed a bill to amend the Copyright Act of 1965 to include computer programs. In article 2 of the law, protected works are defined as including "literary works,... as well as programs for data processing."

The private copying exemptions of article 53 are not applicable to programs, and "reproducing a program for data processing or essential parts thereof shall only be permissible with the authorization of the entitled party."

HONG KONG

In Hong Kong the courts have decided two cases holding that video game programs were protected by copyright. In those cases the judges had no difficulty in finding that the programs involved were literary works and that their reduction to a physical form through their embodiment in a ROM was a fixation. The judges agreed that the question of the copyright status of computer programs was a question policy that could be decided by the courts. The Hong Kong Customs Department, the agency charged with copyright enforcement, has impounded a number of shipments of pirated software being transhipped through Hong Kong.

On December 18, 1987, the Privy Council in Hong Kong issued an order extending the U.K. Copyright (Computer Software) Amendment Act 1985 to Hong Kong. This confirms the application of the present case law.

HUNGARY

In Hungary patent protection is available for processes which may be implemented in programs provided that the normal requirements for patentability are met. However, since that decision was reached, the decree implementing the copyright law has been amended.

In Decree No. 15 the Minister of Culture amended the implementing Decree of the Hungarian copyright law to include in its enumeration of protected works "computer programs and the related documentation (hereinafter referred to as software). Even before the Implementing Decree was issued, the Municipal Court of Budapest had rendered two judgments holding that computer programs were works of applied science in the meaning of the Hungarian copyright law. The court found that the particular programs in the cases were original works entitled to copyright protection.

Both cases dealt with disputes between employer and employee, and in each the court held that the employer was required to compensate the employee programmers for their work in accordance with the provisions of the Hungarian Copyright Act dealing with employee-author rights.

INDIA

No Indian cases have been reported so far on the legal protection of programs, but the Bill No. XIX of 1984, the Copyright (Amendment) Bill, amended the copyright Act of 1957 to state that the definition of a literary work includes "computer programmes, that is to say, programmes recorded on any disk, tape, perforated media or other information storage device, which if fed into or located in a computer or computer based equipment, is capable of reproducing any information."

INDONESIA

On September 9, 1987, the Parliament of Indonesia passed a series of amendments to the 1982 Indonesian copyright law which were signed into law on September 19, 1987. Among those amendments are the inclusion of computer programs in the article 11 enumeration of protected works. The duration of protection will be 25 years from publication. In addition, the amendments increased the penalties for criminal infringement to a maximum of 7 years imprisonment and/or a 100,000,000 Rupiahs fine (approx. US $62,500).

In January 1989, Indonesia announced its intention to join the Berne Convention some time this year. On March 21, 1989, the U.S. and Indonesia executed a long delayed bilateral agreement establishing copyright relations between the two countries. This agreement obligates each country to provide the other's citizens, domiciliaries and works full national treatment, and provides for protection in Indonesia of all U.S. works which remain in copyright under U.S. law.

IRELAND

In Ireland, the official view is that the present copyright law protects all forms and types of computer programs as literary works. An amendment to the copyright law to confirm this view is in process.

ISRAEL

The Israeli Patent Law applies to inventions embodied in computer programs. The Commissioner of Patent has issued a patent for a system which was implemented in part, in a computer program. In that particular case the invention satisfied the requirements of novelty and non-obviousness. If the essential elements of the claimed invention lie in the computer program itself, patent protection will not be granted. This position has been upheld by the District Court. In the absence of a Supreme Court ruling this position is a statement of present Israeli patent law regarding programs.

Several cases involving the applicability of the Israeli copyright law to computer programs have been decided. District Courts have extended copyright protection to specific programs. The Minister of Justice has appointed a Copyright Law Revision Committee to consider all aspects of the copyright protection of computer programs.

ITALY

In Italy computer software is not protected under the patent law in accordance with Article 12 of the Italian Patent Law of 1979. However, a recent decision regarding video games has acknowledged the possible applicability of the Italian Copyright Law of 1941 to the protection of computer programs. The court interpreted the copyright law broadly to include "works of the intellect." This is a departure from an earlier Italian case which held that a work had to meet an artistic standard to be protected. It is worthwhile to note that in dealing with the video game as a cinematographic work, like a video game, could be reproduced by means of "electronic impulses emanating from punched cards, from a magnetic tape, a printed circuit or any other means capable of decoding an 'informatics' language." Even though this was not directed specifically to computer programs it implies that a computer programming language could be regarded as an "informatics" language capable of expressing the programmers' thoughts.

JAPAN

On April 11, 1985, the Japanese Government introduced a bill in the Diet to recognize that copyright applied to computer programs. Like the French and the U.S. copyright laws, the Japanese law provides that programs created by an "employee in the course of his duties" belong to the employer unless otherwise stipulated in the contract of employment or labor regulations. Like the U.S. laws, the authorship in such programs is attributed to the employer.

In respect to moral rights, the law provides that the author of a program may not object to moral rights, the law provides that the author of a program may not object to a "modification," which is necessary for enabling to use in a particular computer, a program work which is otherwise unusable in that computer, or to make more effective use of a program work in a computer.

The amended Japanese copyright law also provides that the owner of a copy of a program may copy or adapt that program to the extent necessary to use the program, but the owner must dispose of those copies if the original program copy is no longer in his possession. The author of the program may not object to the use of those copies or adaptation under the Article 113 moral right provision.

The copyright in computer programs endures for the life of the author and 50 years after death, except for works created by salaried employees in which the term expires 50 years after publication or 50 years after creation, if the work "has not been made public." The author has the exclusive right to import, sell, and distribute his works as with any other copyrighted work. In addition, the use of an infringing copy of a computer program, as well as an imported infringing copy, is defined as an infringement if the person making use of the program was aware of the infringing nature of the copy or copies at the time title was acquired.

In Japan the Patent Office has issued, "Standards for Examination of Computer Programs as Inventions," according to which a program may be eligible for patent protection if it is a work embodying a "technical" idea utilizing natural laws. In any case, patents will be available only for programs that meet the patent law standards of utility, novelty and non-obviousness.

KOREA

In January of 1987, the Korean National Assembly passed new copyright legislation that extends explicit copyright protection to computer programs. The new copyright law lists computer programs as a specifically protected work in Article 4. The provisions relating to the protection of program copyrights are provided in the Computer Program Protection Law. Both of these laws came into force on July 1, 1987. Korea has deposited its instrument of ratification for the Universal Copyright Convention, which entered into force for Korea on October 1, 1987. Under the UCC, foreign computer programs are protected in Korea.

Under Korean law only programs created after July 1, 1987 (the effective date of the new Korean copyright and Computer Program Protection Laws) are entitled to protection. In this case, the original program was created prior to July 1, 1987 but the derivative work was created subsequent to that date. The Program Deliberation Committee determined that the derivative version was entitled to protection under the law. As a consequence, the Korean Police are continuing to investigate the activities of the alleged infringers.

MALAYSIA

In April of 1987, the Malaysian Parliament passed a new copyright law that extends explicit copyright protection to computer programs. The term of protection is the life of the author and 50 years. The new law came into effect on December 1, 1987 when it was published in the Government Gazette.

MEXICO

On September 28, 1984 the Secretary of Public Education issued Regulation No. 114 providing for the registration of computer programs in the Mexican Copyright Office. Thus far no cases on program copyrights have come before Mexican courts. The Government of Mexico currently has under consideration extensive revisions to its copyright law which would include full protection for computer programs.

THE NETHERLANDS

Several decisions apply the Dutch Copyright Law to computer programs.

In the first decision the Assen District Court held that for a work to be protected by copyright, there had to be a certain minimum of creative activity expressed in the work. The court gave the plaintiff the opportunity to submit the program in suit to examination by experts who would be asked to determine if it were an original creation. The case was settled and the examination did not take place.

In the second copyright case, the court did not discuss program copyrightability because it assumed the copyrightability of the program. However, the court found no infringement of the copyright. All that the defendant had used in producing the allegedly infringing program were the ideas on which the program was based. The fact that a few portions of the program were identical was not sufficient to establish infringement. Given the technical nature of the subject, more evidence or data was needed to establish that the allegedly infringing program was copied from the plaintiff's program.

In the so called "Logboekprogram" case the court found that a computer program is a work in the sense of the copyright law. This decision provides a review of the principles of program copyright and concludes that copyright is available to protect the form of expression of a program but not the ideas on which it is based.

In September of 1983, the Netherlands Minister of Justice set up an Interministerial Working Group on the piracy of copyrighted works. Inter alia this group studied the protection of computer programs. The first report of the Working Group recommended that for greater clarity "a computer program in source or object code" should be included among the examples of protected works in Article 10 (1) of the Dutch Copyright Act.

In The Netherlands computer programs are generally considered to be outside the scope of patent protection. The Appeals Division of the Dutch Patent Office held that programs are not protected on the theory that the combination of a program with a machine did not result in the creation of a new patentable apparatus. The Appeals Division also rejected the contention that the program could be protected as a process because it concluded that only those processes that bring about a change in a physical substance are subject to patent protection.

NEW ZEALAND

In a recent case a New Zealand court barred the parallel importation of computer programs sought to be imported in violation of an exclusive license. The court assumed, without discussion, that programs were protected by the New Zealand copyright law.

NORWAY

In Norway, the current copyright legislation is applicable to the protection of programs. Specific amendments tailored to program protection are in progress.

PERU

The National Library of Peru, the administrator of Peru's Copyright law, has promulgated a regulation on October 10, 1987 which provides for copyright registration for computer programs. This regulation confirms that software is protected as a literary work under Peruvian law and that programs may be registered in the voluntary copyright registry.

THE PHILIPPINES

In the Philippines computer program are recognized as copyrightable subject matter in Presidential Decree No. 49, effective December 6, 1973. No court decisions have been reported on computer software protection.

SINGAPORE

The new Singapore Copyright Law came into force on April 10, 1987. It extends full copyright protection to computer programs. U.S. and British works, including computer programs, are protected under the Singapore Copyright Law in accordance with regulations issued on the same data. Protection under the new law applies to all U.S. works

that are protected by copyright in the United States on the effective date of the regulations.

On August 2, 1985, the Singapore High Court issued a permanent injunction against 15 firms to prohibit their dealing in copied Apple Computer software. These firms also are reported to have given Apple "an undertaking that in the future they will not infringe the copyright of Apple's software."

SOUTH AFRICA

The courts in South Africa have held the South African copyright law is applicable to computer software. The court has held that because the preparation of programs involve considerable effort and skill, much as in the case of the creation of a compilation, programs are protected by copyright.

SPAIN

A new intellectual property law came into effect on November 17, 1987. It includes copyright protection for computer programs. Protection extends to technical documentation and user's manuals.

SWEDEN

In Sweden, there are several court decisions that protect programs with copyright. However, revisions to the copyright law to clarify that computer programs are literary works are under active consideration. In a report published by the Swedish Ministry of Justice on "Copyright and Computer Technology," the Committee on the Revision of the Copyright Law has submitted concrete proposals for revision of the copyright law to take into account advances in computer technology.

In its report the Committee took the view that computer programs are to be considered as a type of literary work under the Copyright Act, provided that they are the result of an act of intellectual creativity. This Committee stated: "This should be clarified by

inserting in the Act a mention of such programs as a category or protected works. The protection applies to the program regardless of the material support in which it is embodied and regardless of its character of source code or object code. Obviously the protection applies, in conformity with established copyright law principles, only to the form in which the creator has put his idea but not to e.g., ideas or algorithms as such contained in the program."

SWITZERLAND

The Swiss Confederation is in the process of completing a comprehensive revision of its copyright law. The inclusion of computer program in the revision is under serious consideration. The new Swiss unfair competition law, in the interim, will provide some measure of protection for computer programs.

TAIWAN

The 1985 Taiwan copyright law specifically includes computer programs as protected works in Article 4 (16). A computer program is defined as "a set of instructions composed for the purpose of directly or indirectly causing a computer to bring about a certain result."

THAILAND

In Thailand most experts agree that computer programs are protected as literary works. This opinion has been affirmed by a non-binding opinion of the Thai Juridical Council. However, the question must be decided in the courts.

TURKEY

In Turkey, Article 2(c) of the "Regulations on the Enumeration of Literary and Artistic Works" provides for the registration of computer programs.

UNION OF SOVIET SOCIALIST REPUBLICS

The USSR is in the progress of a comprehensive revision of its copyright law. The plans include revisions that would make the law compatible with the requirements of the Berne Convention including extending the term of protection from life plus 25 years to life plus 50 years. Full copyright protection for computer programs is expected to be included.

UNITED KINGDOM

The U.K. Government is currently considering a draft Copyright, Designs, and Patents Bill, which provides that computer programs are a type of literary work. In 1985, Parliament amended the Copyright Act 1956 to provide copyright protection for software. The 1985 amendment provided that "a revision of the program in which it is converted into or out of a computer language or code, or into a different computer language or code, is an adaptation of the program."

The amendment also defined storage of any copyrighted work in a computer as a reproduction of that work. The increased criminal sanctions against unauthorized duplication of sound recordings and cinematographic works also apply to the unauthorized reproduction "of a computer program in a disc, tape or chip or any other device which embodies signals serving for the importation of the program or parts of it..."

In the United Kingdom patent protection is available for certain aspects of computer programs if the invention underlying the program is embodied in some apparatus or process of manufacture.

VENEZUELA

In Venezuela, computer programs may be registered in the National Copyright Register. No cases have thus far been reported.

TERMINOLOGY

If a term has been defined in national legislation, the definition of that term is given. If no statutory reference is made the definition given is based upon common understanding of that term.

"**Algorithm**" means methods of combining in a program, instructions given to a computer. Japan, Law No. 48 of 1970, Art 10(3) (iii).

"**Computer**" means a stored program, electronic digital device capable of storing, processing, or retrieving information or data.

"**Computer program**"

Australian copyright law -

> "computer program" means an expression, in any language, code or notation, of a set of instructions (whether with or without related information) intended, either directly or after one or both of the following: a) conversion to another language, code, or notation; b) reproduction in different material form, to cause a device having digital information processing capabilities to perform a particular function. Austl. Copyright Act, 1968, S10(1); Singapore Copyright Act, 1987, S7(1).

Brazilian software copyright law -

> A computer program is the expression of a set of organized instructions in natural or codified language contained in any medium of fixation, to be used in automatic machines that process information, peripheral apparatus, instruments and equipment based on digital techniques, and to make them function in accordance with and for determined purposes. Brazil, Law No. 7646 of December 18, 1987, Art. 1.

Canadian copyright law -

> "computer program" means a set of instructions or statements, expressed, fixed, embodied or stored in any manner, that is to be used directly or indirectly in a computer in order to bring about a specific result. Canada, Copyright Act, Section 2.

Indonesian copyright law -

> A "computer program" is a program specially developed to enable a computer to perform certain functions. Indonesia, Law No. 6 of 1982 as amended by Law No. 7 of 1987, Art. 1(g).

Japanese copyright law -

> "program" means an expression of combined instructions given to a computer so as to make it function and obtain a certain result. Japan, Law No. 48 of 1970, Art. 2(1) (xbis).

Korean copyright law and the Computer Program Protection Law -

> "program" shall mean a set of instructions and commands, to be used directly or indirectly in a computer in order to bring about a certain result, which are expressed in a creative way. Korea, Copyright Law Art. 1(12), and Computer Program Protection Law, Art. 2(1).

Malaysian Copyright Law -

> "computer programme" means an expression, in any language, code or notation, of a set of instructions (whether with or without related information) intended to cause a device having a digital information processing compilation to perform a particular function either directly or after either or both of the following:
>
> (a) conversion to another language, code or notation;
>
> (b) reproduction in a different material form. Malaysia, Copyright Law of 1987, Art. 3.

Singapore copyright law of 1987 the definition is the same as in the Australian law, see (a) above.

Spanish copyright law -

> "Computer programme" means any sequence of instructions or indications intended for direct or indirect use on a computer system in order to carry out a function or a task or for obtaining a specific result.

Taiwan copyright law -

> "computer program" shall mean a set of instructions composed for the purpose of directly or indirectly causing a computer to bring about a certain result. Taiwan Copyright Law, Art.3 (20).

United States copyright law -

> A "computer program" is a set of statements or instructions to be used directly or indirectly in a computer in order to bring about a certain result. 17 U.S.C. S101.

"**Source code**" means the original language in which a computer program is written. Source code programs may be written in high-level languages such as ALGOL, COBOL, Fortran, BASIC, PLI, APL or ADA; in intermediate level languages such as assembly languages; or even in machine language. If a source code is written in a higher level language, it must be converted, by another program called a compiler or interpreter, into the machine language usable directly in the computer. Programs written in assembly language also require processing into machine language by a program called an assembler.

"**Object code**" means the version of a program that is directly usable in a computer. Object code is written in so-called machine language and when printed looks like a string of numbers or numbers and letters, depending on certain technical characteristics of the computer for which that language is intended.

"**Operation system program**" a class of programs that enable a computer to manage its internal operations, control devices attached to it, and communicate with its users. Such programs include compilers, interpreters, assemblers, input/output programs, and the like.

"**Applications program**" means a class of programs that are created to put the computer to practical use. These include programs for game playing, inventory management, information retrieval, word processing and so on.

"**Programming language**" in the Japanese Copyright Law means letters and other symbols as well as their systems for use as means of expressing a program. Japan, Law No. 48 of 1970, Art. 10(3) (i).

"**Read Only Memory or ROM**" means the special type of semiconductor or microcircuit chip that is used to store programs or other data. Programs are imprinted into these chips at their time of manufacture and cannot be erased or changed by users. They can only be "read" by the computer. The contents of a ROM may be printed on paper by first "reading" its contents into a computer and then directing the computer to print out what it has "read".

"**Rule**" in the Japanese Copyright Law means a special rule on how to use, in a particular program, a programming language mentioned in the preceding item. Japan, Law No. 48 of 1970, Art. 10(3) (ii).

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United State Department of Commerce, Patent and Trademark Office
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APPENDIX A
LEGAL PROTECTION FOR COMPUTER SOFTWARE SUMMARY TABLE
JANUARY 1989

Nation	Copyright	Trade Secret/Unfair Competition	Trademark	Patent	Mask Works
Argentina	Probably (1)	-	-	-	-
Australia	Yes *	Yes	Yes	Unclear	#(1)
Austria	Probably	-	-	Unclear (4)	-
Belgium	Probably	Probably	Yes	(Perhaps 3) (4)	#(2)
Brazil	Yes *	Very Limited	-	No	-
Bulgaria	No	Sui Generis	-	No	-
Canada	Yes *	Yes	Yes	Sometimes	#(2)
Chile	Limited *	-	-	-	-
China (PRC)	Doubtful	-	Yes	Perhaps (3)	-
Columbia	Probably	-	-	-	-
Czecholslavakia	Unclear	-	No	-	-
Denmark	Probably (2)	Limited	-	Yes *	* #
Dominican Republic	Yes *	-	-	-	-
E.E.C.	-	-	-	-	* #
Ecuador	Limited	-	-	-	-
Egypt	Unclear	-	-	-	-
Finland	Probably (2)	Probably	-	Unclear	#(2)
France	Yes *	Probably	-	(Perhaps 3) (4)	Yes * #
West Germany	Yes *	Yes	Yes	(Perhaps 3) (4)	Yes * #
East Germany	Unclear	-	-	Yes *	-
Greece	-	-	-	(4)	#
Hong Kong	Yes *	(5)	-	-	-

Appendix A
Summary Table continued
Page ii

Nation	Copyright	Trade Secret/Unfair Competition	Trademark	Patent	Mask Works
Hungary	Yes *	Yes	-	(Yes 3)	-
India	Yes *	-	-	-	-
Indonesia	Yes *	-	-	-	-
Ireland	Yes (2)	-	-	Maybe	#
Israel	Yes	-	-	Yes (3)	-
Italy	Yes (1)	Probably	Yes	No (4)	# (1)
Japan	Yes *	Very Limited	-	Sometimes *	Yes * #
Liechtenstein	-	-	-	(4)	-
Luxembourg	Probably	-	Yes	(4)	#
Malaysia	Yes *	Maybe	-	Unclear	-
Mexico	Limited * (2)	Very Limited	Yes	No	-
Monacco	-	-	-	(4)	-
Netherlands	Yes (1)	Yes	Yes	No (4)	Yes * #
New Zealand	Probably (2)	Probably	-	Unlikely	-
Nigeria	Maybe	-	-	-	-
Norway	Probably (2)	-	Yes	Unclear	-
Panama	-	-	-	Yes	-
Peru	Yes *	-	-	-	-
Philippines	Yes *	-	-	-	-
Poland	Probably (1)	-	-	No	-
Portugal	Yes *	-	-	-	#
Romania	Unclear	-	-	No	-
Singapore	Yes *	Probably	Limited	Unclear	-
South Africa	Yes	Probably	-	Maybe	-

Nation	Copyright	Trade Secret/Unfair Competition	Trademark	Patent	Mask Works
South Korea	Yes *	Limited *	Limited	Sometimes	-
Spain	Yes *	Maybe	Sometimes	(4)	# (1)
Sweden	Probably (2)	-	-	(Perhaps 3) (4)	Yes * #
Switzerland	Unclear(2)	Probably (5)	Yes	No (4)	#
Taiwan (ROC)	Yes *	-	Yes	Unclear	-
Thailand	Unclear	-	Some	No	-
Turkey	Probably *	-	-	-	-
U.S.S.R.	Maybe (1)	-	-	Unclear	-
U.K.	Yes (5)	Yes	Yes	Unclear (4)	Yes * #
U.S.A.	Yes *	Yes	Yes	Sometimes	Yes *
Uruguay	Maybe	-	-	-	-
Venezuela	Limited *	Limited	-	-	-
Yugoslavia	Maybe	-	-	No	-

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* Special legislation passed or decree issued
# Covered by interim U.S. order
(1) Legislation or decree pending
(2) Legislation or decree proposed
(3) If included in Process
(4) See also European Patent Convention
(5) New U.K. Act passed November 15, 1988. By order in Council the 1985 Act covering software was extended on February 1, 1988 to Bermuda, British Indian Ocean Territory, Falkland Islands, Gibraltar, Hong Kong, Montserrant, South Georgia and South Sandwich Islands.

OVERVIEW OF EXPORT REGULATIONS

Exporters of U.S. computer software enjoy a degree of freedom under the U.S. export control regulations that is unique among high technology products. Although the U.S. Commerce Department's Export Administration Regulations ("EAR") describe a variety of software deemed militarily significant and attempt to prevent that software from reaching the Soviet Bloc, other software, generally that which has not been deemed militarily significant, may legally be shipped directly to the Kremlin with minimal government interference.

In an era when the United States strictly controls most computer hardware exports to even its allies, and when virtually no other technical data other than software may be exported to the Soviet Bloc without specific government permission, software exporters are indeed privileged. This is not to say, however, that software vendors may ignore the export control requirements altogether. Many software transactions, including some that in and of themselves are purely domestic, continue to require government approval. The following article reviews the highlights of the software export controls and describes some of the traps awaiting the unwary.

BACKGROUND

As a general matter, the United States controls a given export for any of three reasons: national security, foreign policy or because the item is in short supply in the United States. Software exports tend to be restricted, if at all, by "national security controls." These controls are intended to prevent export transactions that would make a significant contribution to the military potential of another country to the detriment of the United States. Occasionally, a software export transaction will be caught in a general set of "foreign policy controls" aimed at certain countries, for example, Cuba, Vietnam, and Cambodia. The United States is the only major industrialized country that routinely uses trade restrictions as a means of demonstrating its displeasure with the actions of other nations. One example of foreign policy controls was provided by President Reagan in mid-September 1985, when he banned exports of a large number of items, including computer hardware, software, and related technology, for use by South Africa's apartheid-enforcing agencies. More recently, President Bush has revoked export licenses authorizing military exports to the People's Republic of China in the wake of that

country's crackdown on student-led protests.

For the record, the third type of controls is imposed to prevent depletion of scarce strategic commodities. These so-called "short-supply controls" have little application to computer software exports.

The Export Regulating Administration also provide for two distinct levels of export controls. If an export transaction is subject to the more restrictive level of control, the exporter must apply to the Commerce Department for what is called a "validated license," a certificate which grants the exporter permission to complete the transaction. The greatest problem associated with a validated license is the time required for the Commerce Department to process an application, a time period that could run from 10 days to six months. The other problem, of course, is that the license applications could be denied.

The lower level of export control is called a "general license." A general license requires no application; it amounts to a waiver of the application requirements granted by the regulations for specific types of transactions. General licenses are available for a wide variety of exports, but if a transaction does not qualify for any of the general licenses described in the regulations, a validated license is required.

Do I have to apply for a validated license, or can I complete my transaction without talking to the Commerce Department at all?

The process for determining the rules that apply to exports of a particular software package can be summarized in a deceptively simply flowchart following this article. Each step in this flowchart, however, requires a fair amount of explanation.

Step 1.

Is the software listed on the Commodity Control List?

The Commodity Control List (CCL) is a laundry list of items subject to the export controls regarding commodities. As a general matter, items on the list are designated by an export control commodity number and are grouped in nine categories according to the nature of the item (ranging from metalworking machinery to electronics and precision instruments).

Although the CCL is enormous in both length and scope, software exporters need be concerned about relatively few entries, pertaining to such items as software for numerically controlled machine tools, and CAD/CAM software specifically created for the design or manufacture of integrated circuits or circuit boards. Relatively new to the list is software specially designed for communications switching equipment.

If a software package falls within any of the relevant CCL entries, a validated license will generally be required for exports to all destinations other than Canada, except where the export is an integral part of a related hardware export transaction that has received the Commerce Department's blessing. Even where this exception supposedly applies, however, it makes little difference, because the exporter must carefully describe the software in its hardware export license application.

Software that includes a cryptographic function--message or file encryption, message authentication or password encryption--may present a special problem. In addition to being listed on the CCL, such software is also controlled by the State Department's Office of Munitions Control under the International Traffic in Arms Regulations. Current policy generally prohibits exports of message and file encryption features based on the Data Encryption Standard, and places significant administrative requirements on most other encryption exports. Many would-be exporters have accordingly found it extremely helpful to discuss their planned encryption products before establishing their overseas distribution channels.

If, on the other hand, the software is not described on the CCL, it is subject to a different set of rules, so onward to the next step.

Step 2.

Is the software aeronautics or nuclear related?

Software or any other technical data that are related to nuclear uses require a validated license for export to any destination including Canada. Software related to aeronautic uses requires a validated license for export to any destination other than Canada.

Step 3.

Is the software listed in the Export Administration Regulations at Part 779 Supplement 3?

Supplement 3 to Part 779 (of title 15 of the Code of Federal Regulations) contains the list of software determined to be militarily significant. The Commerce Department periodically expands Supplement 3 and exporters must pay close attention to those changes or risk violating the regulations. At this writing, the list contains a variety of entries ranging from software designed to run on Eastern Bloc computers to CAD/CAM software for the design or manufacture of controlled commodities. The more advanced the technology incorporated into the software, the more likely it is that the software shows up in Supplement 3.

The process of classifying software under the U.S. export controls can generally benefit from the participation of an engineer or other individual with technical training and close familiarity with the software product. The question of whether a particular software package falls within Supplement 3 is largely a matter of technical interpretation. Although it is tempting to take the problem to an attorney simply because it looks complicated, the attorney will very likely need to talk to an engineer familiar with the software in question. Only after you or your engineer has studied the full list in Supplement 3 and you are certain that you can't tell whether your software is affected by Supplement 3 will it finally be time to bring your attorney into the project in a bigger way.

Before you do so, however, read steps 4 and 5 below, which may convince you that you really don't care if your software is within Supplement 3.

If the software is not listed in Supplement 3, you win! Go immediately to step 6, pass Commerce, and collect your software license fees. Otherwise, proceed to step 4.

Step 4.

Is the Supplement 3 software to be exported to a free world destination?

A free world destination is located any place other than in one of the following countries, which are collectively referred to as controlled countries: Afghanistan, Albania, Bul-

garia, Cambodia, Cuba, Czechoslovakia, East Germany, Hungary, Laos, Libya, Mongolian People's Republic, North Korea, People's Republic of China, Poland, Romania, the USSR, and Vietnam.

If the Supplement 3 software will be exported to one of these destinations, a validated license is required. This requirement comports with the United States' obligation under an international agreement between the U.S., Japan, Australia and most of its NATO allies to help keep military significant software--including Supplement 3 software-- from reaching Eastern Bloc countries.

If, on the other hand, the consignee is in the free world, proceed to step 5.

Step 5.

Has the exporter obtained the consignee's written assurances that neither the software nor its direct product will be reexported to a controlled country?

Written assurances of non-reexport are a prerequisite for a general license that permits shipping of Supplement 3 software to a free world country. This requirement, however, is something less than meets the eye. Very little microcomputer software will fall within Supplement 3, and most mainframe and minicomputer software is marketed subject to a prohibition against the software being moved out of the computer in which it is installed, much less out of the country. It is a relatively simple matter to amend the provision to control the "direct product" of the software as well. The Commerce Department has in the past been willing to accept such clauses as meeting the written assurance requirements. Nevertheless, if for some reason a required written assurance is not forthcoming, a validated license is required (and will likely be denied).

Step 6.

Is there any other rule preventing the software from being exported under a general license?

Even if your software transaction looks as if it should be eligible for a general license, there are, of course, exceptions and conditions. For example, a general license is normally unavailable if the consignee is located in an embargoed country such as

Cambodia or Libya. A general license is also unavailable if the software is intended for use by certain agencies of the South African government.

Similarly, a validated license is required if the export violates a denial order, that is, if it violates an order issued by the Commerce Department denying the exporter or the consignee privileges to engage in export transactions due to a past indiscretion.

Step 7.

If the software is eligible for a general license, what about the medium on which the software will be exported?

Before you let your engineer escape, you will probably want him or her to consider the requirements for software media as well. Although you would do well to check the full CCL entry dealing with this question, the rules are especially significant if the media to be exported approach state of the art. Even then, media worth less than $1,000 may be exported to a free world country under a general license.

By now it should be clear that most software can be exported to free world countries, and that a great deal of software can be exported to most Communist countries, under a general license. But a fair number of software transactions will still require a validated license issued by the Commerce Department. To apply for a validated license, the would-be exporter submits to the Office of Export Licensing a completed Form ITA-6221P (see editor's note at the end of this section).

OTHER THINGS THE SOFTWARE EXPORTER SHOULD KNOW

Knowing whether a particular software package is normally eligible for a general license is only half the battle. The export licensing system contains numerous traps and pitfalls waiting to snare the unwary. This section provides a few guidelines for avoiding some of the more important obstacles facing would-be exporters.

Know the general scope of the regulations and establish a plan for compliance.

The first step toward staying out of trouble is to know that the export licensing requirements exist, and to establish internal corporate procedures for complying with them. Recognize in particular that the Commerce Department uses an unusual definition of the word "export" in reviewing transactions in software and other so-called technical data. As far as the Government is concerned, a software vendor has exported software even if he has never taken it across the border if he has released it in the United States "with the knowledge or intent that [it] will be shipped or transmitted from the United States to a foreign country..."([1]) The Commerce Department has had little occasion to define the exact scope of this definition. It is apparent, however, that if the software requires a validated license for export to certain destination countries, the exporter should be extremely careful about showing citizens of that country the source code to his products, or allowing them to use his software, even in this country, to solve problems they are having overseas.

In addition, it is important to be aware that the United States maintains control on reexports of U.S.-origin goods and technology. In the Government's view, an American item remains American forever, long after it has been exported, remade, incorporated into a foreign product and rendered almost unrecognizable. Also in the Government's view, the United States has a right to limit the manner in which a U.S.-origin item is reexported to another destination.

Be prepared for the rules to change

The second defense in the export administration jungle, and in international transactions generally, is to remember always that the rules are subject to change, at times very rapidly. Changes occur because the Government recognizes new technologies that are militarily significant (or, for that matter, old technologies that are militarily significant and for some reason decontrolled).

Changes also occur for foreign policy reasons. In recent memory, the United States has, for example, embargoed grain exports to the Soviet Union, embargoed exports for the Soviet natural gas pipeline, cut off all trade with Iran, Libya, Nicaragua and Panama, and limited military exports to the People's Republic of China.

Each of those actions caught some people off guard. They affected both longstanding contracts and as yet unfinalized agreements. They affected U.S. technology that had already been exported and placed in foreign hands. And, they caused severe damage to the U.S. reputation as a reliable supplier.

Because such changes to the U.S. trade relationships can come quickly and because they can affect a contract that has been in effect for years, the software exporter is usually wise to include in its license agreements a clause that excuses performance if the exporter is unable to gain the necessary Government permissions or if those permissions are revoked. A properly drafted clause will help to prevent a situation where the exporter must choose between paying the price to the U.S. Government or paying contract penalties to foreign customers.

Avoid time pressures

A fact of life in exporting high technology is that it may take time, sometimes a great deal of time, to obtain a needed export license. Applications to export high technology items often get careful scrutiny and, therefore, companies may suffer long delays in the application process. Because computer hardware and software are among the highest of the high technology, the exporters must be particularly alert to the possibility that a license application could take up to six months to wend its way through the system. To protect himself or herself, the exporter must:

1. Look ahead. Do not wait until the last minute to determine whether an export license will be needed to complete the transaction. Factor the delay into the terms of the transaction and prepare the application form as soon as all the necessary information is available. This will normally require having negotiated a complete agreement with the customer, but not always. Be alert to the possibilities for filing early.

2. Take particular care to ensure that the application form is complete when filed. The Commerce Department gets more and more license applications every year. As the number of applications increases, pressure naturally builds on already overworked Commerce Department employees to push paper through the system at increasing speeds. The easiest way for the Department to dispose of an application is to find a reason (a missed question, an obvious error) to return it without action. As budget cuts take hold, this pressure can only get worse.

3. Be aware that even if the exporter follows the regulations to the letter, the Department may legitimately require additional information about the transaction, and delay any action on the application until the exporter has supplied the required information. If the exporter is facing time pressures, it may be appropriate to discuss the application in advance with the appropriate Commerce officials to

ensure that all of the information they need will be contained in the first submission.

4. Be aware that the Commerce Department's rules contain emergency procedures that can lead to quick action on the application. Also, be aware, however, that the Department does not like to use them, and is unlikely to respond to an emergency of the exporter's own making. It will, however, attempt to accommodate exporters finding themselves in true emergency situations.

CONCLUSION

The U.S. export control system allows U.S. software vendors a substantial degree of freedom to develop and serve overseas markets. The government will, however, revoke the freedom of individual exporters who ignore the relatively minimal requirements the EAR impose. The exporter can best preserve its privilege by implementing an export control compliance program that demonstrates dedication and good faith efforts to comply with the export restrictions.

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[1] 15 C.F.R. S 379.1(b)(1)(ii) (1985).

Editor's note:

Exporters may obtain export administration forms from the following offices:

U.S. Department of Commerce
International Trade Administration
World Trade Center, Suite 307
Boston, MA 02210
Phone: (617) 565-8576

Or by writing to:

Office of Exporting Licensing
P.O. Box 273
Washington, D. C. 20044

Within 10 days after the date an application is received by the Office of Export Licensing, the Office will either accept the application for further processing or, if it is determined that the application is improperly completed or additional information is required, return the application to the applicant without action. When returning an application, OEL will inform the applicant of the specific deficiencies that must be corrected. Any such applications that are resubmitted to OEL will be treated as new applications for the purpose of establishing processing time limits. If OEL accepts and application for further processing it will send the applicant an acknowledgement that -

1. Includes the date of receipt, the applicable case number, and a description of the procedures required by section 10 of the Act, the responsibilities of the various agencies that will be reviewing the application, and the rights of the applicant;

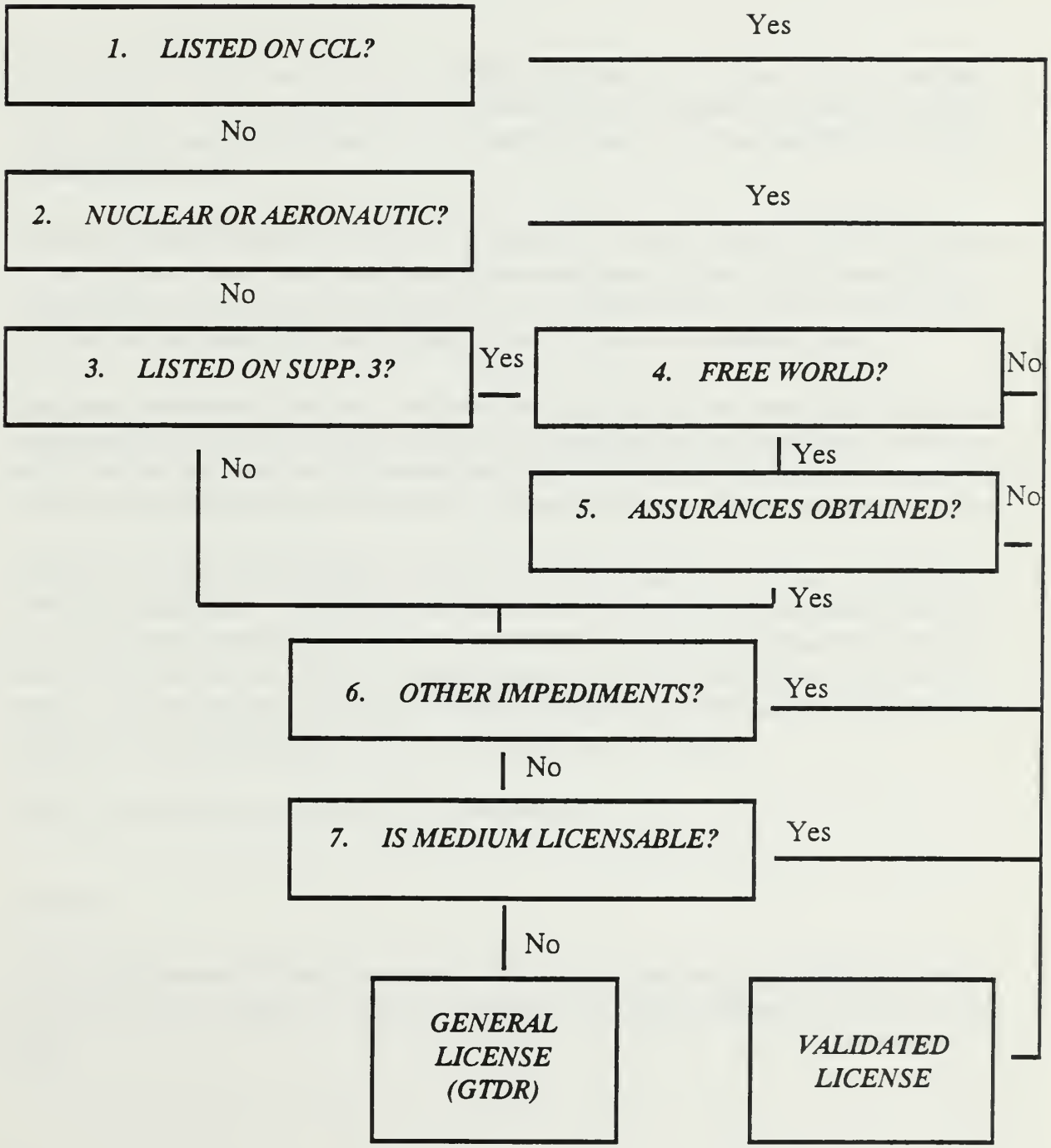
2. Informs the applicant if, based on an initial analysis, the application needs to be referred any other agency, and identifies the agencies; and

3. Notifies the applicant if, based on an initial analysis, the application must be refered for multilateral (COCOM) review.

When an application need not be referred to other agencies, OEL will either issue or deny a license within 60 days of receipt.

THE NEW RULES

START



LOCALIZATION OF SOFTWARE FOR INTERNATIONAL MARKETS

What is the potential market for your software products in France? West Germany? Japan? Are you effectively barred from these lucrative markets because your product doesn't speak the local language? Or is your distributor in Paris handling the French translation for you?

Whether you already have a localized product on the market or are still thinking about it, you will save money and time if you have considered all the implications of a local-language product and planned accordingly. On the other hand, a poorly-translated user interface can be worse for your company's image than no translation at all.

Language translation of the user interface (on-line instructions, messages, menus) and documentation is what most people think of as localization, but translation is only one part of the process. A more accurate and more useful concept is localization as a special branch of product development; the localized product is an *addition to the product line.*

This idea -- the foreign language product as a unique, separate product -- is the key to successful localization. Think of all the steps and all the groups that contribute to the development and production of a software product, including functional design, profitability analysis, hardware/software environment plan, quality assurance, and post-sales support. In each of these cases, the localized product may differ significantly from the original -- and each language version can differ from the others.

Some of the following steps should be considered:

DESIGN:

Accounting practices differ from country to country. Icons may signify different things (or nothing) from culture to culture. Alphabetic sorting is different in different languages.

PROFITABILITY:

Before you promise to translate your product into Portuguese to get that big order in Brazil, have you calculated what your real costs, over the life of the product, of creating and supporting the Portuguese-language version will be?

HARDWARE/SOFTWARE ENVIRONMENT:

Do you know what languages are supported by each of the operating systems, CRTs, and printers with which your product is advertised as being "fully compatible"? Be careful: the printer vendor may claim "full French character set" but omit the upper case accented vowels required in Canada, though not in France.

QUALITY ASSURANCE:

Who checks the linguistic *and functional* correctness of the localized product? Even when steps are taken to keep software translators from touching program code, unforeseen damage to functionality can occur accidentally in the process of translation. Who has more invested in the quality and long-range viability of your products -- you or your distributor?

SUPPORT:

Like your other products, the localized versions have to be supported: bugs verified and fixed; updates and revisions issued (with all that process entails); documentation revised and addenda printed and distributed. And always the French customer will want his/her latest revision as soon as he/she hears that the English one is shipping.

A common approach to software localization is to contract with a translation agency. It is possible to get a good translation from an agency -- if the translator is familiar with your type of product and the special terminology in the target language. However, it is not uncommon to get a good translation in one language, and a poor one in another, from the same agency. Also, since most translators used by agencies are free-lancers, the original translator may not be available for the next revision, resulting in a patchwork effect and uneven quality.

If you sell through distributors overseas, you may decide to let them handle the local-language versions. There are good reasons to do this, but there are also risks. Remember: each localized version is a product in its own right; what you are really doing is providing your source code so that the distributor can create a similar product in the local-language. You have little control, if any, over the quality of the localized product and what the distributor will do with it and with your source code. Who owns the localized product if you want to change distributors later on?

This is not to say that to be successful localization has to be done in-house from start to finish; like other services it can be subcontracted in a variety of ways. However, you would not delegate to the vendor the final determination of whether the services meet your standards. Likewise, responsibility for setting and enforcing standards for foreign-language products properly belongs to someone within your company who represents your own interests.

Since software localization is a new field, even by computer industry standards, the number of specialists in the field with industry experience is small -- but it is growing to meet the growing demand. Some are or have been professional translators; others have academic credentials in computer science and/or foreign languages.

With an understanding that successful localization results from a broad-based team effort, and that special expertise as well as financial resources are required, a good foundation can be laid for success in the international markets.

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OWNERSHIP OF SOFTWARE ADAPTATIONS PREPARED IN JAPAN

U.S. software products generally must be adapted to reflect local market conditions in order to improve marketing success in Japan. The modifications needed for such an adaptation can be as simple as a translation of English into Kanji of screen menus, user guides and other documentation. Currently, such adaptations are usually prepared in Japan by the Japanese distributor, licensee or other marketing partner of the U.S. vendor. Although contracts should provide for the U.S. vendor to be assigned and to own all right, title and interest in such adaptations, the "work made for hire" and "moral rights" provisions of the Japanese Copyright Act may limit what is actually transferred by such assignments. This paper will identify the rights at stake and will recommend precautions to reduce the risk that the owner of the original software will lose any proprietary rights. Although this paper focuses on Japan, moral rights issues may arise in other countries as well, notably in Western Europe.

Without careful planning software development in Japan may result, by operation of Japanese law, in the developer's gaining certain proprietary rights in the particular modifications made. The U.S. vendor may not be able to market the adaptation through another entity in Japan or to make or have made further modifications without the Japanese party's consent. This could result in the loss of a significant investment of time and money.

JAPANESE COPYRIGHT ACT

Under the Japanese Copyright Act, a copyright includes both "property" rights and "moral" rights. Property rights are similar to the rights enjoyed by copyright owners in the U.S., i.e., the exclusive right to economic benefits resulting from the protected work. Property rights can be freely transferred by their owner. Moral rights, however, have no counterpart in U.S. copyright law; their purpose is to protect an author's reputation and honor, and they include the right to decide whether to make a work public if it has not

yet been made public and the right to preserve the integrity of the work and its title against modifications. Under the traditional Japanese approach, a blanket waiver or transfer by an author of moral rights would not be effective. In the case of an authorized adaptation which is a "copy" or "secondary work" of a software work owned by a U.S. vendor, the issue is whether the Japanese author of the modification retains any moral or property copyright interest in the adaptation which prevents the U.S. vendor from otherwise exploiting the work.

Under Japanese Law, most adaptations would likely be classified as either a "copy" or "secondary work" of the U.S. vendor's work, depending on the extent of the modifications. A secondary work is the equivalent of a derivative work under the U.S. Copyright Act. As under U.S. law, one of the exclusive rights of a copyright holder under Japanese law is to prepare secondary works. Because the Japanese marketing partner will, in most instances, be exercising an exclusive right of the original copyright owner in preparing adaptations, rather than creating a totally original work of authorship, the U.S. vendor can argue that it owns the copyright in the adaptation whether software or documentation. The success of this argument cannot be assured, however, and it is weakened when the modified portion is separable. The argument would not be relevant to software development in Japan which is not a modification of or based on a preexisting work.

The 1985 amendments to the Japanese Copyright Act eliminated the need for end-users to obtain approval of the moral rights holder for certain modifications but probably do not provide a solution for the U.S. software vendor's dilemma. Modifications necessary either to run the program on a computer which would not otherwise be able to run it, or to make more effective use of it on a computer are permitted without the consent of the author. Unfortunately, this does not apply to documentation and appears to apply only to end users.

A software owner, distributor, licensee or other marketer can argue that the ambiguity in the law should be construed to allow it to have these limited rights to modify as well. An interpretation to the contrary could inhibit the rapid development and marketing of software, which the 1985 amendments are intended to promote. On the other hand, the limitation on moral rights may be strictly construed to ensure that only an end user may make minor modifications in a program which are necessary for its use in operations. Such minor modifications would not likely injure the "honor" or "reputation" of the author. Accordingly, the success of this argument, too, cannot be predicted with certainty.

RECOMMENDATIONS

Although the arguments described above may prevail under Japanese copyright law, the U.S. vendor should structure a transaction with a Japanese marketing partner in a manner that strengthens the vendor's claim to own the copyright, both property and moral rights, in the resulting adaptation. The entire issue of moral rights can be avoided by having all adaptations prepared in the U.S. under contracts providing for an assignment of all right, title and interest in such work. There are several U.S. vendors which provide such a service. Another alternative is to bring the Japanese software development team to the U.S. so that the work is clearly under the jurisdiction of the U.S. Copyright Act. Written assignments are determinative under the U.S. law.

If neither of these approaches is possible, the software owner should enter into a written agreement with the developer which includes specific provisions that enhance the owner's claim to ownership of all rights in the adaptation. This would include an assignment of all right, title and interest in the work. The contract should expressly state the parties' intention that copyright issues arising under it are to be governed by the U.S. Copyright Act. Although moral rights involve a strong public policy, Japanese courts are generally willing to interpret contracts under foreign law in accordance with the wishes of the parties.

If the assignment provision is to be effective, however, the vendor must be sure that no one in Japan other than the marketing partner can claim moral or other rights in the software adaptation. Under the Japanese Copyright Act, the marketing partner will have a claim to these rights only if the partner is an individual who personally prepares the adaptation or is an employer who can claim ownership of the adaptation under the "works made for hire" provisions of the Act.

In the absence of a contract to the contrary, if a work is created by an employee of a corporation (or other organization), the corporation originally acquires the copyright (both moral and property rights) when the following three conditions are satisfied:

* The work was prepared at the initiative of the corporation, and

* The work was prepared by the employee within the scope of his/her employment duties, and

* The work was published under the name of the corporation.

In the case of software, the 1985 amendments to the Japanese Copyright Act eliminated the requirement for the work to be published under the name of the corporation employing the creator of the work. Unfortunately, manuals and other documentation must still be published or there must be a plan for publication under the name of the corporation in order for the corporation to own the copyright. When documentation contains trade secrets, publication will not likely occur or be planned, and the employee rather than the corporation will be deemed the legal author. Nevertheless, as noted above, the U.S. vendor can argue that the adaptation is a legally authorized secondary work in which it owns both the moral and property rights.

The "work made for hire" provisions do not apply when the work is created by an independent contractor unless the contractor is held to be a defacto employee as has occurred in some cases under U.S. law. An independent contractor (perhaps a corporation itself) which develops software owns both the property rights and the moral rights in the work created. Thus, as indicated, while the modifications may be a "work made for hire" as between the Japanese party and its employee, they will not have such status as between the U.S. vendor and the Japanese party.

A number of precautionary provisions should also be included in the contract with the Japanese marketing partner because of the possibility that the copyright issues may be governed by Japanese law and decided in a Japanese court. First, the parties should expressly acknowledge that, for purposes of the Japanese Copyright Act, any translation of the original software will be considered a "secondary work." As indicated, a copyright owner has an exclusive right to make copies and to prepare secondary works and therefore a colorable claim to ownership of all proprietary rights in copies and secondary works.

Next, the contract should grant the U.S. vendor a nonexclusive, royalty-free license to exercise any moral rights to the modifications which may be owned by the Japanese developer. Because the license is nonexclusive and the developer can also exercise such rights, it can be argued that the grant does not constitute a prohibited transfer of moral rights.

Finally, the contract should expressly provide that the modifications must be prepared by employees of the Japanese party with which the software owner is contracting rather

than by an independent contractor. The moral rights to modifications developed by an independent contractor are more likely to be owned by the contractor and would not be subject to these precautionary provisions.

CONCLUSION

A software owner's retention of all rights in software adapted for the Japanese market can be assured only by having the adaptation prepared in the U.S. under a competently drafted development agreement. When modifications must be made in Japan, however, the contractual precautions described above will strengthen the software owner's claim to all rights in the adaptation.

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